

TITLE 15
FRANCHISES

Subject	Chapter
Natural Gas Franchise.....	1
Cable Service	2

CenterPoint Energy Gas Franchise Ordinance

AN ORDINANCE GRANTING CENTERPOINT ENERGY RESOURCES CORP., d/b/a CENTERPOINT ENERGY MINNESOTA GAS (“CENTERPOINT ENERGY”), ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN FACILITIES AND EQUIPMENT FOR THE TRANSPORTATION, DISTRIBUTION, MANUFACTURE AND SALE OF GAS ENERGY FOR PUBLIC AND PRIVATE USE AND TO USE THE PUBLIC WAYS AND GROUNDS OF THE CITY OF ANDOVER, COUNTY, MINNESOTA, FOR SUCH PURPOSE; AND, PRESCRIBING CERTAIN TERMS AND CONDITIONS THEREOF

THE CITY COUNCIL OF THE CITY OF ANDOVER, ANOKA COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

City. The City of Andover, County of Anoka, State of Minnesota.

City Utility System. Facilities used for providing public utility service owned or operated by City or agency thereof, including sanitary sewer, storm sewer, water service, street lighting and traffic signals, but excluding facilities for providing heating, lighting, or other forms of energy.

Commission. The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate gas retail rates now vested in the Minnesota Public Utilities Commission.

Company. CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas (“CenterPoint Energy”) its successors and assigns including all successors or assigns that own or operate any part or parts of the Gas Facilities subject to this Franchise.

Gas Energy. Gas Energy includes both retail and wholesale natural, manufactured or mixed gas.

Gas Facilities. Gas transmission and distribution pipes, lines, ducts, fixtures, and all necessary equipment and appurtenances owned or operated by the Company for the purpose of providing Gas Energy for retail or wholesale use.

Notice. A writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to CenterPoint Energy, Minnesota Division Vice President, 800 LaSalle Avenue,

Minneapolis, Minnesota 55402. Notice to the City shall be mailed to City of Andover, City Clerk, 1685 Crosstown Blvd. NW, Andover, MN. 55304. Any party may change its respective address for the purpose of this Ordinance by written Notice to the other parties.

Ordinance. This gas franchise ordinance, also referred to as the Franchise.

Public Way. Any highway, street, alley or other public right-of-way within the City.

Public Ground. Land owned or otherwise controlled by the City for utility easements, park, trail, walkway, open space or other public property, which is held for use in common by the public or for public benefit.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to import, manufacture, distribute and sell Gas Energy for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future and also the right to transport Gas Energy through the limits of the City for use outside of the City limits. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Ways and Public Grounds, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to a Public Right-of-Way Management Ordinance also identified title eight, chapter two, of City Code, so long as such City Code and/or Ordinances comply with state law. If any term contained in a City Ordinance or City Code is not in compliance with state law, state law shall control as to such noncompliant term.

2.2 **Effective Date; Written Acceptance.** This Franchise shall be in force and effect from and after the passage of this Ordinance and publication as required by law and its acceptance by Company. If Company does not file a written acceptance with the City within 60 days after the date the City Council adopts this Ordinance, or otherwise inform the City, at any time, that the Company does not accept this Franchise, the City Council by resolution shall revoke this Franchise.

2.3. **Service and Gas Rates.** The terms and conditions of service and the rates to be charged by Company for Gas Energy in City are subject to the exclusive jurisdiction of the Commission.

2.4. **Publication Expense.** Company shall pay the expense of publication of this Ordinance.

2.5. **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written Notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this Franchise or for such other relief as may be permitted by law or equity.

2.6. **Continuation of Franchise.** If the City and the Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow Franchise to expire. However, in no event shall this Franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1. **Location of Facilities.** Gas Facilities shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System. Gas Facilities may be located on Public Grounds in a location selected by the City. The location and relocation of Gas Facilities shall be subject to regulations of the City consistent with authority granted the City to manage its Public Ways and Public Grounds under state law, to the extent not inconsistent with a specific term of this Franchise.

3.2. **Street Openings.** Company shall not open or disturb the surface of any Public Way or Public Ground for any purpose without first having obtained a permit from the City, as required by title eight, chapter two, of City Code, for which the City may impose a fee, unless the City is receiving a franchise fee pursuant to this Ordinance, in which case all permit fees will be waived, so long as such City Code and/or Ordinances comply with state law. If any term contained in a City Ordinance or City Code is not in compliance with state law, state law shall control as to such noncompliant term. Permit conditions imposed on Company shall not be more burdensome than those imposed on other public-right-of-way users for similar facilities or work. Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) Company gives telephone, email or similar Notice to the City before commencement of the emergency repair, if reasonably possible. Within three business days after commencing the repair, Company shall apply for any required permits and pay any required fees.

3.3. **Restoration.** After undertaking any work requiring the opening of any Public Way or Public Ground, the Company shall restore the Public Ways or Public Grounds in accordance with Minnesota Rules, 7819.1100 and City Code title eight, chapter two, so long as such City Code and/or Ordinances comply with state law. If any term contained in a City Ordinance or City Code is not in compliance with state law, state law shall control as to such noncompliant term. Company shall restore the Public Ground to as good a condition as formerly existed, and shall maintain the surface in good condition for six months thereafter. All work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration of the Public Ways or Public Grounds at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. The Company shall be required to post a construction performance bond.

3.4. **Avoid Damage to Gas Facilities.** The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Gas Facilities by persons,

property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable Notice by the City of such work prior to its commencement.

3.5. **Notice of Improvements to Streets.** The City will give Company reasonable written Notice of plans for improvements to Public Ways and Public Grounds where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The Notice will contain: (i) the nature and character of the improvements, (ii) the Public Ways or Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Grounds is involved, the order in which the work is to proceed. The Notice will be given to Company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit Company to make any additions, alterations or repairs to its Gas Facilities the Company deems necessary.

3.6 **Mapping Information.** If requested by City, the Company must promptly provide complete and accurate mapping information for any of its Gas Facilities in accordance with the requirements of Minnesota Rules 7819.4000 and 7819.4100 and title eight, chapter two of City Code, so long as such City Code and/or Ordinances comply with state law. If any term contained in a City Ordinance or City Code is not in compliance with state law, state law shall control as to such noncompliant term.

3.7. **Emergency Response.** As emergency first-responders, when a public safety concern exists both the City and Company shall respond to gas emergencies within the City without additional direct fee or expense to either City or Company.

SECTION 4. RELOCATIONS.

4.1. **Relocation in Public Ways and Public Grounds.** The Company and City shall comply with the provisions of Minnesota Rules 7819.3100 and title eight, chapter two of City Code, with respect to requests for the Company to relocate Gas Facilities located in either Public Ways or Public Grounds, so long as such City Code and/or Ordinances comply with state law. If any term contained in a City Ordinance or City Code not in compliance with state law, state law shall control as to such noncompliant term.

4.2. **Projects with Federal Funding.** Relocation, removal, or rearrangement of any Company Gas Facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Sections 161.45 and 161.46 and title eight, chapter two of City Code, so long as such City Code and/or Ordinances comply with state law. If any term contained in a City Ordinance or City Code is not in compliance with state law, state law shall control as to such noncompliant term.

SECTION 5. INDEMNIFICATION.

5.1. **Indemnity of City.** Company shall indemnify and hold the City harmless from any and all liability, on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned

through its own negligence or otherwise wrongful act or omission except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work.

5.2. **Defense of City.** In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written Notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such Notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

SECTION 6. VACATION OF PUBLIC WAYS AND PUBLIC GROUNDS.

The City shall give Company at least two weeks prior written Notice of a proposed vacation of a Public Ways or Public Grounds. The City and the Company shall comply with Minnesota Rules 7819.3100 and Minnesota Rules 7819.3200 with respect to any request for vacation.

SECTION 7. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 8. FRANCHISE FEE.

8.1. **Form.** During the term of the franchise hereby granted, the City may charge the Company a franchise fee. The Company will administer the collection and payment of franchise fees to City, or other fees that may otherwise be imposed on the Company in relation to its operations as a public utility in the City. The franchise fee will be collected on a flat per meter basis, or by some other method that is mutually acceptable to both City and Company for each retail customer within the corporate limits of the City. The amount of the fee collected may differ for each customer class. The City will use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. If the Company claims that the City required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company will provide a formula that will produce a substantially similar fee amount to the City. If the City and Company are unable to agree, the disagreement shall be subject to the Dispute Resolution provisions of this Ordinance.

8.2. **Separate Ordinance.** The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least sixty (60) days after written Notice enclosing such proposed ordinance has been served upon the Company by certified mail. The

Company is not required to collect a franchise fee if the terms of the fee agreement are inconsistent with this franchise or state law, provided the Company notifies the City Council of the same within the sixty (60) day period.

8.3. **Condition of Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of energy within the City by any other energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through an agreed-upon franchise.

8.4. **Collection of Fee.** The franchise fee shall be payable not less than quarterly during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed from time to time, however, the change shall meet the same Notice and acceptance requirements and the fee may not be changed more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company shall not be responsible to pay City fees that Company is unable to collect under Commission rules or order. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

8.5. **Continuation of Franchise Fee.** If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon. However, the franchise fee will not remain in effect for more than one year after the franchise expires as stated in Section 2.6 of this Franchise. If for any reason the franchise terminates, the franchise fee will terminate at the same time.

SECTION 9. ABANDONED FACILITIES.

The Company shall comply with Minnesota Statutes, Section 216D.01 et seq. and Minnesota Rules 7819.3300, as they may be amended from time to time with respect to abandoned facilities located in Public Ways and Public Grounds. The Company shall maintain records describing the exact location of all abandoned and retired Gas Facilities within the Public Ways and Public Grounds produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Gas Facilities, including abandoned and retired Gas Facilities not located in Public Ways and Public Grounds.

SECTION 10. PROVISIONS OF ORDINANCE.

10.1. **Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2. **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties. No provisions herein shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party

beneficiary of this Ordinance or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 11. AMENDMENT-PROCEDURE.

Either party may propose at any time that this Franchise Ordinance be amended. Franchise Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 60 days after the effective date of the amendatory ordinance. If the Company does not consent to the amendment, the ordinance containing the amendment shall be revoked by City.

CHAPTER 2
Cable Service

ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE NORTH CENTRAL COMMUNICATIONS CORPORATION, D/B/A AT&T BROADBAND, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF ANDOVER, MINNESOTA FOR THE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

The City Council of the City of Andover, Minnesota ordains:

STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and interests of the residents and citizens of the City and the public generally. Further, the City may achieve better utilization and improvement of the public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the Council, in the best interests of the City and its residents.

FINDINGS

In the review of the request and proposal for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by the City complies with the existing applicable Minnesota Statutes, federal laws and regulations; and

4. The Franchise granted to Grantee is nonexclusive.

SECTION 1.

SHORT TITLE AND DEFINITIONS

- 1.1 **Short Title.** This Franchise Ordinance shall be known and cited as the “Cable Franchise Ordinance.”
- 1.2 **Definitions.** For the purpose of this Franchise, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein or in the City Code shall be given the meaning set forth in applicable law and, if not defined therein, the words shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory. The word “may” is directory and not mandatory.
- 1.3 **“Actual Cost”** means the incremental cost to the Grantee of materials, capitalized labor, and borrowing necessary to install and construct fiber-optic lines, coaxial cable and/or equipment.
- 1.4 **“Affiliate”** means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.
- 1.5 **“Basic Cable Service”** means any service tier that includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543 (b) (7).
- 1.6 **“Cable Modem”** means an electronic device, commonly referred to as such, at a minimum, containing a modulator and demodulator, tuner, interface, media access control mechanism and CPU, which acts as an interface between a Subscriber’s customer premises equipment and the System and is capable of converting analog signals to digital signals and digital signals to analog to analog signals, thereby allowing data communications to be carried over System facilities.
- 1.7 **“Cable Service” or “Service”** means (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscribers interaction, if any, which is required for the selection or use of such video programming or other programming services. For purposes of this Franchise, “Cable Service” includes, but is not limited to, the provision of Internet service over the System, Institutional Network services and any other services or capabilities, but only to the extent consistent with the definition of “Cable Service” pursuant to federal or State law or applicable regulations.

- 1.8** “Cable System” or “ System” means the facility of the Grantee consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include: (1) a facility that only serves to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of the Title II of the Communications Act, except that such facility shall be considered a System if such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. § 573; (5) any facilities of any electric utility used solely for operating its electric utility system; or (6) a translator system which receives and rebroadcasts over-the-air signals. A reference to the System in this Franchise refers to any part of such System including, without limitation, Converters. The foregoing definition of “System” shall not be deemed to circumscribe or limit the valid authority of the City to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law. “Cable System” or “System” as defined herein shall not be inconsistent with the definitions set forth in applicable law. Any reference to “Cable System” or “System” herein, which system is owned or operated by a Person other than the Grantee, shall be as defined herein.
- 1.9** “City” means City of Andover, Minnesota, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
- 1.10** “City Code” means the Andover City Code, as amended from time to time.
- 1.11** “City Council” means the governing body of the City.
- 1.12** “Class IV Cable Channel” means the signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.
- 1.13** “Commission” means the Quad Cities Cable Commission, a municipal joint powers consortium comprised of the municipalities of Andover, Anoka, Champlin, and Ramsey, Minnesota. In the event the City lawfully withdraws from the Commission, any reference to the Commission in this Franchise shall thereafter be deemed a reference to the City, and the rights and obligations related thereto shall, where possible, accrue pro rata to the City, pursuant to a transition agreement to be negotiated at such time by and between the City, the Commission and the Grantee. The total burden of Grantee’s obligations under this Franchise and the Grantee’s Franchise with the other member cities of the Commission shall not be increased as a result of any such withdrawal.
- 1.14** “Converter” means an electronic device (sometimes referred to as a receiver) which may serve as an interface between a System and a Subscriber’s television monitor, and which may convert signals to a frequency acceptable to a television monitor of a

Subscriber, and may be an appropriate selector, permit a Subscriber to view all signals of a particular service.

- 1.15** **“CPI”** means the annual average of the Consumer Price Index for all Urban Consumers (CPI-U) for the Minneapolis-St. Paul CMSA, as published by the Bureau of Labor Statistics.
- 1.16** **“Drop”** means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.
- 1.17** **“Educational Access Channel”** or **“Educational Channel”** means any 6 MHz channel on the System set aside by the Grantee, the Commission and/or the City for Noncommercial educational use by educational institutions, as contemplated by the applicable law.
- 1.18** **“FCC”** means the Federal Communications Commission, its designee, and any legally appointed, designated or elected agent or successor.
- 1.19** **“Franchise”** or **“Cable Franchise”** means this ordinance, as may be amended from time to time, any exhibits attached hereto and made a part hereof, and the regulatory and contractual relationship established hereby.
- 1.20** **“Governmental Access Channel”** or **“Governmental Channel”** means any 6 MHz channel on the System set aside by the Grantee, the Commission and/or the City for Noncommercial use by the City or its delegate.
- 1.21** **“Grantee”** is MediaOne North Central Communications Corporation, d/b/a AT&T Broadband, and its lawful successors, transferees or assignees.
- 1.22** **“Gross Revenues”** means any and all revenues arising from or attributable to, or in any way derived directly or indirectly by the Grantee or its Affiliates, subsidiaries, or parent, or by any other entity that is a cable operator of the System, from the operation of the Grantee’s System to provide Cable Services (including cash, credits, property or other consideration of any kind or nature). Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for any basic, optional, premium, per-channel, or per-program service, or other Cable Service including, without limitation, Internet access and Cable Modem service fees charged to Subscribers, to the extent such services are offered as a Cable Service under applicable law; Installation, disconnection, reconnection, and change-in-service fees; Lockout Device fees; Leased Access Channel fees; late fees and administrative fees; fees, payments or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Converters or other equipment; fees related to commercial and institutional usage of the System or the I-Net; advertising revenues; interest; barter; revenues from program guides; franchise fees; and revenues to the System from home shopping, bank-at-home channels and other revenue sharing arrangements. Gross

Revenues shall include revenues received by an entity other than the Grantee, an Affiliate or another entity that operates the System where necessary to prevent evasion or avoidance of the Grantee's obligation under this Franchise to pay the franchise fee. Gross Revenues shall not include: (i) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) any taxes on services furnished by the Grantee imposed by any municipality, state or other governmental unit, provided that franchise fees shall not be regarded as such a tax; (iii) FCC regulatory fees; (iv) Subscriber credits, adjustments or refunds; or (v) refundable Subscriber deposits.

- 1.23 **"Installation"** means the connection of the System from feeder cable to the point of connection with the Subscriber Converter or other terminal equipment.
- 1.24 **"Institutional Network"** or **"I-Net"** means the discrete bidirectional communications network and services related to such network provided by the Grantee to identified institutions as required by the Franchise, and as further described herein.
- 1.25 **"Leased Access Channel"** means channels on the System that are designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S.C. § 532.
- 1.26 **"Lockout Device"** means an optional mechanical or electrical accessory to a Subscriber's terminal that inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.
- 1.27 **"Node"** means the transition point between optical light transmission (fiber-optic cable) and the RF transmission (coaxial cable) of video and data signals being delivered to and received from the Subscriber's home, or in the case of the Institutional Network, signals being delivered to and received from Institutional Network sites and all necessary equipment related to such transition point.
- 1.28 **"Noncommercial"** means, in the context of PEG channels, that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit a PEG channel or programmer from soliciting and receiving financial support to produce and transmit video programming on a PEG channel, or from acknowledging a contribution.
- 1.29 **"Normal Operating Conditions"** means those service conditions that are within the control of the Grantee. Conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, maintenance, or upgrade of the System, and the development, operation or maintenance of the Grantee's telephone system. Conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.
- 1.30 **"PEG"** means public, educational, and governmental.

- 1.31 **“Person”** means any individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability corporation, or other organization of any kind, or any lawful successor or transferee thereof, but such term does not include the City.
- 1.32 **“Public Access Channel(s)”** means any 6 MHz channels on the System set aside by the Grantee, the Commission and/or the City for Noncommercial use by the general public, as contemplated by applicable law.
- 1.33 **“Quad Cities Franchise Area”** means the geographic area consisting of the Minnesota cities of Andover, Anoka, Champlin, and Ramsey.
- 1.34 **“Quad Cities System”** means the Cable System operated pursuant to this Franchise and located in the member municipalities of the Commission.
- 1.35 **“Right-of-Way”** or **“Rights-of-Way”** means the surface, air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, court, concourse, bridge, tunnel, park, parkway, skyway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within the City owned by or under control of the City, or dedicated for general public use by the City, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing operating and maintaining a System. No reference herein to a “Right-of-Way” shall be deemed to be a representation or guarantee by the City that its interest or other right to control or use such property is sufficient to permit its use for the purpose of installing, operating and maintaining the System.
- 1.36 **“Right-of-Way Ordinance”** means any ordinance of the City codifying requirements regarding regulation, management and use of right-of-way in the City, including registration, fees, and permitting requirements.
- 1.37 **“Standard Installation”** means any residential Installation that can be completed using a Drop of 150 feet or less.
- 1.38 **“State”** means the State of Minnesota, its agencies and departments.
- 1.39 **“Subscriber”** means any Person who lawfully receives service via the System. In the case of multiple office buildings or multiple dwelling units, the term “Subscriber” means the lessee, tenant or occupant.
- 1.40 **“System Upgrade”** means the improvement or enhancement in the technology or service capabilities made by the Grantee to the System as more fully described in this Franchise.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

2.1 Grant of Franchise.

This Franchise is granted pursuant to the terms and conditions contained herein and in applicable law. The Grantee shall comply with all provisions of this Franchise and applicable laws, regulations and codes. Failure of the Grantee to construct, operate and maintain a System as described in this Franchise, or to meet obligations and comply with all provisions herein, may be deemed a violation of this Franchise.

2.2 Grant of Nonexclusive Authority.

2.2.1 Subject to the terms of this Franchise, the City hereby grants the Grantee the right to own, construct, operate and maintain a System along the right-of-way. The grant of authority set forth in this Franchise applies only to the Grantee's provision of Cable Service; provided, however, that nothing herein shall limit the Grantee's ability to use the System for other purposes not inconsistent with applicable law or with the provision of Cable Service; and provided further, that any local, State and federal authorizations necessary for the Grantee's use of the System for other purposes are obtained by the Grantee. This Franchise does not confer any rights other than as expressly provided herein, or as provided by federal, State or local law. No privilege or power of eminent domain is bestowed by this Franchise or grant. The System constructed and maintained by Grantee or its agents pursuant to this Franchise shall not interfere with other uses of the right-of-way. The Grantee shall make use of existing poles and other aerial and underground facilities available to the Grantee to the extent it is technically and economically feasible to do so.

2.2.2 Notwithstanding the above grant to use rights-of-way, no right-of-way shall be used by the Grantee if the City determines that such use is inconsistent with the terms, conditions, or provisions by which such right-of-way was created or dedicated, or with the present use of the right-of-way.

2.2.3 This Franchise and the right it grants to use and occupy the rights-of-way shall not be exclusive and this Franchise does not, explicitly or implicitly, preclude the issuance of other franchises or similar authorizations to operate Cable Systems within the City. Provided, however, that the City shall not authorize or permit another Person to construct, operate or maintain a Cable System on material terms and conditions which are, taken as a whole, more favorable or less burdensome than those applied to the Grantee.

2.2.4 This Franchise authorizes only the use of right-of-way. Therefore, the grant of

this Franchise and the payment of franchise fees hereunder shall not exempt the Grantee from the obligation to pay compensation or fees for the use of City property, both real and personal, other than the right-of-way; provided, however, that such compensation or fees are required by City ordinance, regulation or policy and are nondiscriminatory.

- 2.2.5** Should any other multi-channel video programming distributor ("MVPD") over which the City has regulatory jurisdiction provide Cable Service in the current cable service area, the City shall not grant more favorable terms, taken as a whole, to such MVPD than are granted to the Grantee. In the event that another Person operates a Cable System authorized by the City on terms and conditions that are, taken as a whole, more favorable or less burdensome than the terms and conditions applicable to the Grantee under this Franchise, the City shall adjust any such terms and conditions in any other Person's authorization or this Franchise so that the terms and conditions under which such Person operates, taken as a whole, are not more favorable or less burdensome than those that are applied to the Grantee.

2.3 Lease or Assignment Prohibited.

No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid Franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise, including, without limitation, a requirement on such person to pay franchise fees on such person's use of the System to provide Cable Services, to the extent there would be such a requirement under this Franchise if the Grantee itself were to use the System to provide such Cable Service. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of this Franchise.

2.4 Franchise Term.

This Franchise shall be in effect for a period of fifteen (15) years, such term commencing on the effective date specified in this Franchise, unless sooner renewed, extended, revoked or terminated as herein provided.

2.5 Previous Franchises.

As of the effective date, this Franchise shall supercede and replace any previous ordinance, as amended, of the City granting a Franchise to Grantee, including any agreement(s) of the parties related thereto, except the Grantee shall continue to be bound by any previously accrued but unfulfilled obligations under Ordinance No. 59 (the "Prior Franchise") for which the Grantee had notice. The Grantee shall remain liable for payments of all franchise fees and other amounts owed, and for all unfulfilled actions that the Grantee was notified of and required to take under the prior Franchise up to the effective date of this Franchise. The grant of this Franchise

shall have no effect on the Grantee's duty under the prior franchise to indemnify or insure the City against acts and omissions occurring during the period that the Prior Franchise was in effect. This Franchise incorporates, amends and replaces that Memorandum of Understanding dated December 22, 1994.

2.6 Compliance with Applicable Laws, Resolutions and Ordinances.

2.6.1 The terms of this Franchise shall define the contractual rights and obligations of the Grantee with respect to the provision of Cable Service and operation of the System in the City. However, the Grantee shall at all times during the term of this Franchise be subject to the lawful exercise of the police powers of the City, the City's the right to adopt and enforce additional generally applicable ordinances and regulations, and lawful and applicable zoning, building, permitting and safety ordinances and regulations. The grant of this Franchise does not relieve the Grantee of its obligations to obtain any generally applicable licenses, permits or other authority as may be required by the City Code, as it may be amended, for the privilege of operating a business within the City or for performing work on City property or within the right-of-way, to the extent not inconsistent with this Franchise. Except as provided below, any modifications or amendment to this Franchise, or the rights or obligations contained herein, must be within the lawful exercise of the City's police powers, as enumerated above, in which case the provision(s) modified or amended herein shall be specifically referenced in an ordinance of the City authorizing such amendment or modification. This Franchise may also be modified or amended with the written consent of the Grantee as provided in this Franchise.

2.6.2 The Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the right-of-way within the City which may have the effect of superceding, modifying or amending the terms of Section 3 and/or Section 8.5.3 herein; except that the Grantee shall not, through application of such City ordinance or regulation of rights-of-way, be subject to additional burdens with respect to usage of rights-of-way that exceed burdens on similarly situated right-of-way users.

2.6.3 In the event of any conflict between Section 3 and/or Section 8.5.3 of this Franchise and any lawfully applicable City ordinance or regulation which addresses usage of the right-of-way, the conflicting terms in Section 3 and/or Section 8.5.3 of this Franchise shall be superceded by such City ordinances or regulations; except that the Grantee shall not, through application of such City ordinance or regulation of right-of-way, be subject to additional burdens with respect to usage of public rights-of-way that exceed burdens on similarly situated right-of-way users.

2.6.4 In the event any lawfully applicable City ordinance or regulation which addresses usage of the rights-of-way adds to, modifies, amends, or otherwise

differently addresses issues addressed in Section 3 and/or Section 8.5.3 of this Franchise, the Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted; except that the Grantee shall not, through application of such City ordinance or regulation of rights-of-way, be subject to additional burdens with respect to usage of rights-of-way that exceed burdens on similarly situated rights-of-way users.

2.6.5 In the event the Grantee cannot determine how to comply with any right-of-way requirement of the City, whether pursuant to this Franchise or other requirement, the Grantee shall immediately provide written notice of such question, including the Grantee's proposed interpretation, to the City. The City shall provide a written response within ten (10) business days of receipt indicating how the requirements cited by the Grantee apply. The Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within thirteen (13) business days of mailing or delivering such written question.

2.7 Rules of Grantee.

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and applicable law, and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of Minnesota, the City, or any other body having lawful jurisdiction.

2.8 Territorial Area Involved.

This Franchise is granted for the corporate boundaries of the City, as they exist from time to time, provided, however, that the Grantee shall not be required to extend service beyond its present System boundaries except pursuant to the line extension requirement set forth in this Franchise.

2.9 Written Notice.

All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of the Grantee or the City's designated Franchise administrator, or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City of Andover
1685 Crosstown Blvd. NW

Andover, Minnesota 55304
Attention: City Manager/Administrator

With copies to: Franchise Administrator
Quad Cities Cable Commission
737 East River Road
Anoka, Minnesota 55303

And to: Thomas D. Creighton, Esq.
Creighton, Bradley & Guzzetta, LLC
5402 Parkdale Drive
Suite 102
Minneapolis, Minnesota 55416

If to Grantee: General Manager
AT&T Broadband
10 River Park Plaza
St. Paul, Minnesota 55107

With copies to: John F. Gibbs, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
280 LaSalle Plaza
800 LaSalle Avenue South
Minneapolis, Minnesota 55402

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

2.10 Effective Date.

This Franchise shall become effective after: (i) all conditions precedent to its effectiveness as an ordinance of the City have occurred; (ii) all conditions precedent to its execution are satisfied; (iii) it has been approved by the City Council in accordance with applicable law; (iv) an Ordinance containing terms and conditions equivalent to this Ordinance has been approved by each member city of the Commission; and (v) it has been accepted and executed by the Grantee and the City ("Effective Date").

SECTION 3.

CONSTRUCTION STANDARDS

3.1 Registration, Permits and Construction Codes.

3.1.1 The Grantee shall strictly adhere to all applicable State and local laws, regulations and policies adopted by the City Council applicable to the location, construction, installation, operation or maintenance of the System in the City. The City has the right to supervise all construction or installation work performed in the rights-of-way as it shall find necessary to ensure compliance with the terms of this Franchise and other applicable provisions of law and regulations.

3.1.2 Failure to obtain permits or to comply with permit requirements shall be grounds for revocation of this Franchise or any lesser sanctions provided herein or in any other applicable law, code or regulation.

3.2 Restoration of Rights-of-Way and Property.

Any Rights-of-Way, or any sewer, gas or water main or pipe, drainage facility, electric, fire alarm, police communication or traffic control facility of the City, or any other public or private property, which is disturbed, damaged or destroyed during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored, replaced, reconstructed or repaired by the Grantee, at its expense, to the same condition as that prevailing prior to the Grantee's work, to the extent consistent with applicable statutes and rules. It is agreed that in the normal course, with respect to fire and police department facilities and equipment, and water and sewer facilities, and other essential utilities and services, as determined by the City, such restoration, reconstruction, replacement or repairs shall be commenced immediately after the damage, disturbance or deconstruction is incurred, and the Grantee shall take diligent steps to complete the same, unless an extension of time is obtained from the appropriate City agency or department. In all other cases, reconstruction, replacement, restoration or repairs shall be commenced within no more than three (3) days after the damage, disturbance or destruction is incurred, and shall be completed as soon as reasonably possible thereafter. If the Grantee shall fail to perform the repairs, replacement, reconstruction or restoration required herein, the City shall have the right to put the rights-of-way, public, or private property back into good condition. In the event City determines that the Grantee is responsible for such disturbance or damage, the Grantee shall be obligated to fully reimburse the City for required repairs, reconstruction and restoration.

3.3 Conditions on Right-of-Way Use.

3.3.1 Nothing in this Franchise shall be construed to prevent the City from

constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any right-of-way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

- 3.3.2** All System transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as not to obstruct or interfere with the use of right-of-way except for normal and reasonable obstruction and interference which might occur during construction and to cause minimum interference with the rights of property owners who abut any of said right-of-way and not to interfere with existing public utility installations.
- 3.3.3** The Grantee shall, at its sole expense, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate or remove any of its property when required by the City by reason of traffic conditions; public safety; rights-of-way construction; street maintenance or repair (including resurfacing or widening); change in right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of government-owned communications or traffic control system, public work or improvement of government-owned utility; right-of-way vacation; or for any other purpose where the convenience of the City would be served thereby. If the Grantee fails, neglects, or refuses to comply with the City's request, the City may protect, support, temporarily disconnect relocate or remove the appropriate portions of the System at the Grantee's expense for any of the City's incremental costs incurred as a result of the Grantee's failure to comply. Except for the City's gross negligence, the City shall not be liable to the Grantee for damages resulting from the City's protection, support, disconnection, relocation or removal, as contemplated in the preceding sentence.
- 3.3.4** The Grantee shall not place poles, conduits, or other fixtures of the System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any right-of-way shall be so placed as to comply with all lawful requirements of the City.
- 3.3.5** The Grantee shall, upon request of any Person holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same (except in the case where the requesting Person is the City for the purpose of moving a City-owned building, in which case no payment shall be required). The Grantee shall be given not less than ten (10) days' advance written notice to arrange for such temporary wire changes.
- 3.3.6** To the extent consistent with generally applicable City Code provisions, rules and regulations, the Grantee shall have the right to remove, cut, trim and keep clear of its System trees or other vegetation in and along or overhanging the rights-of-

way. However, in the exercise of this right, the Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. This Franchise does not give the Grantee any authority to remove trees on private property in the City. All trimming shall be performed at no cost to the City.

- 3.3.7** The Grantee shall use its best efforts to give prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the rights-of-way.
- 3.3.8** If any removal, relaying or relocation is required to accommodate the construction, operation or repair of the facilities of a Person that is authorized to use the rights-of-way, the Grantee shall, after thirty (30) days' advance written notice, and payment of all costs by such Person, commence action to effect the necessary changes requested by the responsible entity. If multiple responsible parties are involved, the City may resolve disputes as to the responsibility for costs associated with the removal, relaying or relocation of facilities among entities authorized to install facilities in the rights-of-way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or any State or federal law or regulations.
- 3.3.9** In the event the System creates or is contributing to an imminent danger to health, safety or property, as reasonably determined by the City, the City, after providing notice to the Grantee, if it is reasonably feasible to do so, may remove or relocate any or all parts of the System at no expense to the City, other than the City's costs to act on such determination.

3.4 Use of Existing Poles and Undergrounding of Cable.

- 3.4.1** Where existing poles, underground conduits, ducts or wire holding structures are available for use by the Grantee, but it does not make arrangements for such use, the City may require, through the established permit, or any other applicable procedure, the Grantee to use such existing poles and wire holding structures if the City determines that the public convenience would be enhanced thereby and the terms available to the Grantee for the use of such poles and structures are just and reasonable.
- 3.4.2** The Grantee agrees to place its cables, wires or other like facilities underground, in the manner as may be required by the provisions of the City Code and City policies, procedures, rules and regulations, as amended from time to time, where all utility facilities are placed underground. The Grantee shall not place facilities, equipment or fixtures where they will interfere with any existing gas, electric, telephone, water, sewer or other utility facilities or with any existing installations of the City, or obstruct or hinder in any manner the various existing utilities serving the residents of the City. To the extent consistent with the City Code, City policies, procedures, rules and regulations, System cable and facilities may

be constructed overhead where poles exist and electric or telephone lines or both are now overhead. However, in no case may the Grantee install poles in areas of the City where underground facilities are generally used by the utilities already operating. If the City, at a future date, requires all electric and telephone lines to be placed underground in all or part of the City, the Grantee shall, within a reasonable time, similarly move its cables and lines, at no expense to the City, and shall not seek damages from the City for such compliance.

3.5 Installation of Facilities.

- 3.5.1** No poles, towers, conduits, amplifier boxes, pedestal mounted terminal boxes, similar structures, or other wire-holding structures shall be erected or installed by the Grantee without obtaining any required permit or other authorization from the City.
- 3.5.2** No placement of any pole or wire holding structure of the Grantee is to be considered a vested fee interest in the rights-of-way or in City property. Whenever feasible, all transmission and distribution structures, lines, wires, cables, equipment and poles or other fixtures erected by the Grantee within the City are to be so located and installed as to cause minimum interference with the rights and convenience of property owners.

3.6 Safety Requirements.

- 3.6.1** All applicable safety practices required by law shall be used during construction, maintenance and repair of the System. The Grantee agrees, at all times, to employ ordinary and reasonable care and to install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries to the public or to property. All structures and all lines, equipment and connections in the rights-of-way shall at all times be kept and maintained in a safe condition, consistent with applicable safety codes.
- 3.6.2** The Grantee's construction, operation or maintenance of the System shall be conducted in such a manner as not to interfere with City communications technologies related to the health, safety and welfare of City residents.
- 3.6.3** The Grantee shall install and maintain such devices as will apprise or warn Persons using the rights-of-way of the existence of work being performed on the System in rights-of-way.
- 3.6.4** The Grantee shall be a member of the One Call Notification System (otherwise known as "Gopher State One Call") or its successor, and shall field mark the locations of its underground facilities upon request. Throughout the term of this Franchise, the Grantee shall identify the location of its facilities for the City at no charge to the City.

3.7 City Use of Facilities.

The City, after consultation with the Grantee, shall have the right to use for its sole

noncommercial purposes the Grantee's poles, conduits, ducts, and manholes free of charge provided that such current or continued use will not unreasonably interfere with the present or future needs or operations of the Grantee.

3.8 Removal of Facilities at Expiration of Franchise.

At the expiration of the term for which this Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, the City shall have the right to require the Grantee, at the Grantee's sole expense: (i) to remove all portions of the System from all rights-of-way within the City; and (ii) to restore affected sites to their original condition. Should the Grantee fail, refuse or neglect to comply with the City's directive, all portions of the System, or any part thereof, may at the option of the City become the sole property of the City, at no expense to the City or be removed, altered or relocated by the City at the cost of the Grantee. The City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation.

SECTION 4.

DESIGN PROVISIONS

4.1 System Facilities and Equipment.

1.1.1 Upon completion of the System Upgrade, the System generally shall have at least the following characteristics:

4.1.1.1 a modern design when built, utilizing an architecture that will permit additional improvements necessary for high-quality and reliable service throughout the Franchise term, and the capability to operate continuously on a twenty-four hour a day basis without severe material degradation during operating conditions typical to the Minneapolis/St. Paul metropolitan area;

4.1.1.2 standby power generating capacity at the headend. The Grantee shall maintain motorized standby power generators capable of powering all headend equipment for at least twenty-four (24) hours. The back-up power supplies serving the System shall be capable of providing power to the System for not less than three (3) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. The Grantee shall maintain sufficient portable motorized generators to be deployed in the event that the duration of a power disruption is expected to exceed three (3) hours;

4.1.1.3 facilities of good and durable quality, generally used in high-quality, reliable systems of similar design;

4.1.1.4 a System that conforms to or exceeds all applicable FCC technical performance standards, as amended from time to time, which standards are incorporated herein by reference, and any other applicable technical performance standards. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop;

4.1.1.5 a System shall, at all times, comply with applicable federal, State and local rules, regulations, practices and guidelines pertaining to the construction, upgrade, operation, extension and maintenance of Cable Systems, including, by way of example (but not limitation):

(A) National Electrical Code, as amended from time to time; and

(B) National Electrical Safety Code (NESC), as amended from time

to time.

- 4.1.1.6** facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Grantee's System remains in compliance with the standards specified in Subsection 4.1.1.5;
- 4.1.1.7** such facilities and equipment as necessary to maintain, operate and evaluate the Grantee's System for compliance with FCC technical and customer service standards, as such standards may hereafter be amended;
- 4.1.1.8** status monitoring equipment to alert the Grantee when and where back-up power supplies are being used, which capability shall be activated and used on or before the completion of the System Upgrade;
- 4.1.1.9** all facilities and equipment required to properly test the System and conduct an ongoing and active program of preventative maintenance and quality control, and to be able to quickly respond to customer complaints and resolve System problems;
- 4.1.1.10** antenna-supporting structures designed in accordance with any applicable governmental building codes, as amended, and painted, lighted and erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission and all other applicable codes and regulations;
- 4.1.1.11** facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in BTSC stereo format, and a signal received with a secondary audio track with both audio tracks;
- 4.1.1.12** the Grantee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Grantee's Cable Service. The Grantee, however, shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;
- 4.1.1.13** facilities and equipment capable of operating within the temperature ranges typical to the climate of the Quad Cities Franchise Area over the calendar year;

- 4.1.1.14** the System shall be so constructed and operated that there is no perceptible deterioration in the quality of Public, Educational or Governmental Access Channel signals after delivery of such signals to the first interface point with an Institutional Network hub, Grantee's headend or the subscriber network, whichever is applicable, as compared with the quality of any other channel on the System. As used in this paragraph, "deterioration" refers to delivery that is within the control of the Grantee; and
- 4.1.1.15** the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- 4.1.2** The Grantee is authorized and required to continue to operate Grantee's Cable System substantially as it exists on the date hereof, and to provide service substantially equivalent to its existing service, within the territorial limits of the City as of the effective date of this Franchise, until such time as the System is upgraded, as provided herein.
- 4.1.3** The Grantee shall complete a System Upgrade in accordance with the schedule set forth in this Franchise providing at least the following characteristics:
- 4.1.3.1** upon completion of the System Upgrade, the System shall include a hybrid fiber-coaxial architecture, with fiber-optic cable from the headend to the hubs, and from hubs to Nodes. Nodes System-wide shall serve on average 350 dwelling units or less, with a minimum of three (3) fibers connecting such a 350-home average Node to System headends and hubs. Individual Nodes may serve cable passing a number of dwelling units in excess of 350, provided there is no adverse effect on the performance characteristics of the System serving Subscribers from that Node;
 - 4.1.3.2** segmentation of the System so that sufficient capacity is available for interactive services at all times;
 - 4.1.3.3** activation of the bandwidth from 5 to 40 MHz for upstream transmissions;
 - 4.1.3.4** no more than four (4) amplifiers per coaxial cable in each cascade from any Node;
 - 4.1.3.5** a capacity rating of at least 870 MHz for all active and

passive components;

- 4.1.3.6** audio control units shall be utilized for each channel for volume control on analog service, excluding off-air broadcast channels or channels that are locally processed in the hub serving the geographical area. The control equipment shall be located at the master headend location and monitored twenty-four hours a day, seven days a week; and
- 4.1.3.7** electronic transmission and powering equipment connecting the hub(s) in the Quad Cities System to the Grantee's other hubs and/or headend facilities in the Twin Cities metropolitan area shall be of a redundant design.
- 4.1.4** The upgrade System shall initially have a minimum analog channel capacity of at least 78 channels, downstream to all Subscribers, plus additional capacity for digital and other services.
- 4.1.5** The System shall be designed and constructed in order to allow narrowcasting of Government Access Channels discretely by municipality. The Grantee shall provide and maintain all equipment and facilities necessary to accomplish this narrowcasting, at no cost to the City or the Commission.
- 4.1.6** All power supplies for the System shall be equipped with standby power capability in accordance with Section 4.1.1.2. Additionally, the Grantee shall use status monitoring equipment at all power supply locations in the System. Such equipment shall have the capabilities described in Section 4.1.1.8.
- 4.1.7** PEG channels shall not be channel mapped without the prior approval of the Commission. As to all other channels, the Grantee shall make good faith efforts to avoid channel mapping unless that mapping is required to deliver a high-quality signal or to comply with applicable laws or regulations. In the event mapping of non-PEG channels is required to deliver a high quality signal or to comply with applicable laws or regulations, the Grantee agrees to map as few channels as possible.
- 4.1.8** Emergency Alert System.
- 4.1.8.1** The Grantee shall install and thereafter maintain an Emergency Alert System ("EAS") fully compliant with local, state and federal EAS requirements. This EAS shall at all times be operated in compliance with FCC regulations.

4.1.8.2 The System shall be capable of allowing a representative of the City to remotely activate the EAS and to override the audio and video on all channels on the System that may be lawfully overridden (subject to any contractual or other rights of broadcasters) without the assistance of the Grantee, for emergency broadcasts from a location designated by the City.

4.1.9 During the design, walkout and preliminary construction activities related to the System Upgrade, the Grantee shall seek to identify the non-video interests of the business community within the City and shall seek to quantify business community demand for non-video services. Prior to making any final determination of such demand, the Grantee shall solicit input from the City regarding the location of business corridors that may desire such services. The Grantee shall, in connection with the System Upgrade, install conduit adequately sized to address future System rebuilds or System additions, with the intent to obviate the need to reopen the rights-of-way for construction and installation work.

4.1.10 The City may request, as part of the System Upgrade, that the Grantee remove from the rights-of-way, at its own expense, existing equipment, plant and facilities that will not be used in the future, whether activated or not. If any unused or deactivated equipment remains in rights-of-way after such City request and the Grantee's reasonable opportunity to remove, the City may remove such plant, facilities and equipment at the Grantee's expense. The Grantee may appeal any request to remove existing equipment, plant and facilities to the City Council and thereby stay City action until a final decision is issued by the City Council. In the event existing facilities, plant and equipment are left underground in the rights-of-way, the City may require the Grantee to provide accurate maps showing the location and the nature of the deactivated or unused facilities, plant and equipment, if such information has not already been provided to the City.

4.1.11 The Grantee shall not assert or otherwise raise any claim before a court of competent jurisdiction or any administrative agency alleging that, as of the effective date of this Franchise, the minimum System design and performance requirements set forth in this Franchise are unenforceable under or inconsistent with then current applicable laws or regulations, or any orders or decisions of the FCC.

4.2 High-Speed Services.

4.2.1 To the extent the Grantee can lawfully provide high-speed Internet service via the

System as a Cable Service, the System shall provide such a service if the System is technically capable of providing that service.

- 4.2.2** The Grantee shall offer one (1) free residential Cable Modem or its equivalent and free monthly Cable Modem service, including Internet access, to the following entities if they cannot use the Institutional Network for high-speed data transmission or Internet access: (i) each elementary and secondary school located in the City that is passed by the cable distribution network; and (ii) all governmental institutions designated in Exhibit A. The specified Cable Modems and monthly Cable Modem service shall be made available, upon request, to every school and governmental institution within six (6) months of the date that two-way high-speed Internet access is introduced to Subscribers on a commercial basis.

4.3 System and Institutional Network Construction Timetable.

- 4.3.1** Grantee shall complete all construction related to the System Upgrade (including the Institutional Network) and shall fully activate the upgraded System no later than December 31, 2002. The Grantee shall provide for phased activation launches of the subscriber network as Nodes are completed. Failure to timely complete such construction shall be a violation of this Franchise.
- 4.3.2** Within ninety (90) days after the Effective Date of this Franchise, the Grantee shall commence application for necessary permits, licenses, certificates and authorizations that are required in the conduct of its business.
- 4.3.3** Within ninety (90) days after the Effective Date of this Franchise, Grantee shall commence System preliminary construction, walkout, electronic design, fiber design, and other associated System Upgrade steps, and shall give written notice to the City upon commencement of such activities.
- 4.3.4** All construction shall be performed in accordance with applicable laws and regulations, except where specifically waived by the City.
- 4.3.5** The Grantee shall provide the City with notice prior to commencement of steps of the System Upgrade in which possible service disruptions or physical construction activities may occur, including but not limited to: (i) tap pedestal replacements; (ii) amplifier/line extender pedestal replacements; (iii) underground duct replacement; (iv) overlash of aerial fiber optic lines; and (v) underground placement or replacement of coaxial cables.
- 4.3.6** Upon completion of the System Upgrade initial design, the Grantee shall make available to the City for review, on a confidential basis, a concise description of the facilities proposed to be erected or installed, and subscriber network network design prints/map(s), which shall include at least the following elements: (i) trunk

and feeder design; (ii) fiber routes; (iii) Node locations; (iv) standby power supply locations; and (v) areas of the City to be served by each Node.

4.3.7 No System Node shall be activated until it is tested, and the Grantee determines that all applicable technical standards have been met or exceeded.

4.4 Periodic Progress Reporting.

4.4.1 Following commencement of construction of the System Upgrade or any similar major construction, the Grantee shall, upon request of the City, meet with the City and provide an update on the progress of the System Upgrade or other construction.

4.4.2 Public Notification. Prior to the beginning of the System Upgrade and periodically during each phase, the Grantee shall inform the public and its Subscribers, through various means, about: (i) the progress of the System Upgrade or major construction; (ii) areas where construction crews will be working; and (iii) any expected temporary interruptions to existing services which may occur.

4.4.3 Delays in the System Upgrade. The Grantee shall not be excused from the timely performance of its obligation to begin and complete any System Upgrade within the time specified herein, except for the following occurrences:

4.4.3.1 Any "Force Majeure" situation, as described herein; and

4.4.3.2 Unreasonable failure or delay by the City to issue any permits or permission upon a timely and complete application submitted to the City by the Grantee or its contractor representative and tender of any required permit fee.

4.4.4 Consequences of Delays. Absent a showing of excusable delay pursuant to Subsection 4.4.3 above, should the Grantee be unable to demonstrate the commencement or timely completion of the System Upgrade by the times specified herein, or be unable to reasonably justify any delays, then the Grantee shall be in violation of a material provision of this Franchise and the City may, in its sole discretion, either grant the Grantee an extension of time to complete such construction, or implement any enforcement measures or penalties specified in this Franchise or the City Code, including but not limited to revocation of the Franchise. In the event of excusable delay pursuant to Subsection 4.4.3, the time for completion will be extended by the period of such delay.

4.5 Line Extension Requirements.

4.5.1 Subject to Subsection 4.5.2, the Grantee shall make Cable Service available to all residences, businesses and other structures within the City, including multiple

dwelling unit buildings, whose owners or occupants request Cable Service, except for multiple dwelling unit buildings to which the Grantee, after best efforts, has not obtained authorization to access.

4.5.2 Within the City's boundaries; including any areas annexed after the effective date of this Franchise, the Grantee must extend its System upon request to provide service to any Person or business upon request, without charging such Person or business more than the Standard Installation charges for the individual Subscriber's Drop, as long as the following conditions are satisfied, unless the Grantee demonstrates to the City's satisfaction that a waiver of this requirement is justified due to extraordinary circumstances:

4.5.2.1 the new Subscriber requesting service is located 150 feet or less from the termination of the Cable System; and

4.5.2.2 the area of the City in which the new Subscriber resides has a density of at least thirty-five (35) dwelling units per mile of feeder cable, excluding Drop footage, when aerial construction is required for an extension, and at least forty (40) dwelling units per mile of feeder cable, excluding Drop footage, when underground construction is required for an extension. All areas that reach the applicable density requirement at any time during the requirement at any time during the Franchise term shall be provided service upon reaching the minimum density. The City, for its part, shall facilitate the extension of service by requiring developers and utility companies to provide the Grantee with at least fifteen (15) days advance notice of an available open trench for the placement of necessary cable, but in no event shall the City have any liability for its failure to require any Person to provide notice, or for any developer's or utility company's failure to provide advance notice hereunder.

4.5.3 In the event that the requirements set forth in Subsection 4.5.2 are not met, Persons requesting service can be required to bear the remainder of the total construction costs on a *pro rata* basis.

4.5.3.1 The "total construction costs" are defined as the Actual Cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the house Drop.

4.5.3.2 In the event the number of Subscribers in a particular area of the City reaches the density specified in Section 4.5.2.2 within three (3) years from the date construction of the extension is completed, the Grantee shall return to the then existing Subscribers, *pro rata*, the full amount of their contributions for the extension.

4.5.4 Irrespective of the density requirements set forth in this Section 4.5, the Grantee shall continue to offer Service to all dwelling units serviceable prior to the System

Upgrade.

- 4.5.5** The Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas, but in no event shall the applicable timeframe exceed twelve (12) months from notice thereof by the City to Grantee, and qualification of the area requesting service pursuant to Section 4.5.2.2.

4.6 System Maintenance.

- 4.6.1** The Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. The Grantee shall use its best efforts to provide the City with at least twenty-four (24) hours' prior notice of a planned service interruption, except for a planned service interruption which will have a minimal impact on Subscribers, usually meaning affecting less than one hundred (100) Subscribers or less than a fifteen (15) minute interruption.
- 4.6.2** Maintenance of the System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations. Should the FCC choose to abandon this field and does not preempt the City's entry into this field, the City may adopt such technical performance and operating standards as its own, and the Grantee shall comply with them at all times.

4.7 System Tests and Inspections; Special Testing.

- 4.7.1** Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by law or regulation.
- 4.7.2** The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise. In addition, the City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding System construction, operations or installation work pertaining to such location(s). Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers of such testing.
- 4.7.3** Before ordering such tests, the Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. The City shall meet with the Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations that are the focus of concern. If, after such meetings and inspections, the City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy

or resolution of complaints, the tests shall be conducted at the Grantee's expense by a qualified engineer selected by the City and the Grantee, and Grantee shall cooperate in such testing.

4.7.4 Unless otherwise provided in this Franchise, tests shall be supervised by the Grantee's chief technical authority who shall certify all records of tests provided to the City.

4.7.5 The Grantee shall provide the City with at least two (2) business days' prior written notice of, and opportunity to observe, any tests performed on the System.

4.7.6 Test results shall be filed with the City within fourteen (14) days of a written request by the City.

4.7.7 If any test indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the City, shall take corrective action, retest the locations and advise the City of the action taken and the results achieved by filing a written report certified by the Grantee's chief technical authority.

4.8 Drop Replacement.

The Grantee shall replace, at no separate charge to an individual Subscriber, all Drops and/or associated passive equipment incapable of passing the full 870 MHz System capacity at the time a Subscriber upgrades service to a level which requires a signal above the 550 MHz spectrum.

4.9 FCC Reports.

Unless otherwise required by the terms of this Franchise, the results of any tests required to be filed by Grantee with the FCC or in the Grantee's public file shall upon request of the City also be filed with the City within ten (10) days of the request.

4.10 Nonvoice Return Capability.

Grantee is required to use cable and associated electronics having the technical capacity for non-voice return communications.

4.11 Lockout Device.

Upon the request of a Subscriber, the Grantee shall make a Lockout Device available at no additional charge, other than a charge for a Converter.

4.12 Types of Service.

Should the Grantee desire to change the selection of programs or services offered on

any of its tiers, it shall maintain the mix, quality and level of services provided over the System. Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Franchise and in applicable law or regulations.

4.13 Uses of System.

The Grantee shall, upon request of the Commission, advise the Commission of all active uses of the System, for both entertainment and other purposes, and the Commission shall have the right to conduct unannounced audits of such usage.

4.14 Additional Capacity.

The Grantee shall notify the City in writing, in advance of the installation of any fiber optic capacity not contemplated by the initial design or System Upgrade, so that additional fibers may be installed on an Actual Cost basis for government and institutional use. If the City wishes to request additional fiber, it may notify the Grantee within fifteen (15) days of receipt of the Grantee's notification.

SECTION 5.

SERVICE PROVISIONS

5.1 Customer Service Standards.

The Grantee shall at all times comply with FCC customer service standards. In addition, the Grantee shall at all times satisfy all additional or stricter customer service requirements included in this Franchise and any customer service requirements set forth in any ordinance or regulation lawfully enacted by the City.

5.2 Video Programming.

Except as otherwise provided in this Franchise or in applicable law, all programming decisions remain the discretion of the Grantee, provided that the Grantee notifies the Commission and Subscribers in writing thirty (30) days prior to any channel additions, deletions, or realignments unless otherwise permitted under applicable federal, State and local laws and regulations. Grantee shall cooperate with the Commission and use best efforts to provide all Subscriber notices to the Commission prior to delivery to Subscribers. Location and relocation of the PEG channels shall be governed by Sections 6.1.3-6.1.4.

5.3 Regulation of Service Rates.

5.3.1 The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System to the extent allowed under federal or State law(s). The City reserves the right to regulate rates for any future services to the extent permitted by law.

5.3.2 The Grantee shall provide at least one billing cycle prior written notice (or such longer period as may be specified in FCC regulations) to Subscribers and to the City of any changes in rates, regardless of whether or not the Grantee believes the affected rates are subject to regulation, except to the extent such notice requirement is specifically waived by governing law. Bills must be clear, concise, and understandable, with itemization of all charges.

5.4 Sales Procedures.

The Grantee shall not exercise deceptive sales procedures when marketing Services within the City. In its initial communication or contact with a Subscriber or a non-Subscriber, and in all general solicitation materials marketing the Grantee or its Services as a whole, the Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced and free service tiers. The Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulations.

5.5 Subscriber Inquiry and Complaint Procedures.

- 5.5.1** The Grantee shall have a publicly listed toll-free telephone number which shall be operated so as to receive general public and Subscriber complaints, questions and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week, 365 days a year basis. Trained representatives of the Grantee shall be available to respond by telephone to Subscriber and service inquiries.
- 5.5.2** The Grantee shall maintain adequate numbers of telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries in a manner consistent with regulations adopted by the FCC and the City where applicable and lawful. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.
- 5.5.3** Subject to the Grantee's obligations pursuant to law regarding privacy of certain information, the Grantee shall prepare and maintain written records of all complaints received from the City and the Commission and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of the Grantee. The Grantee shall provide the City or Commission with a written summary of such complaints and their resolution upon request of the City or Commission. As to Subscriber complaints, Grantee shall comply with FCC record-keeping regulations, and make the results of such record-keeping available to the City or Commission upon request.
- 5.5.4** Excluding conditions beyond the control of the Grantee, the Grantee shall commence working on a service interruption within twenty-four (24) hours after the service interruption becomes known and pursue to conclusion all steps reasonably necessary to correct the interruption. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem, and pursue to conclusion all steps reasonably necessary to correct the problem.
- 5.5.5** The Grantee may schedule appointments for Installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during the hours of 9:00 a.m. to 8:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturdays. The Grantee may also schedule service calls outside such hours for the convenience of customers. The Grantee shall use its best efforts to not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the installer or

technician is late and will not meet the specified appointment time, he/she must use his/her best efforts to contact the customer and reschedule the appointment at the sole convenience of the customer. Service call appointments must be met in a manner consistent with FCC standards.

5.5.6 The Grantee shall respond to written complaints from the City and the Commission in a timely manner, and provide a copy of each response to the City and the Commission within thirty (30) days. In addition, the Grantee shall respond to all written complaints from Subscribers within (30) days of receipt of the complaint.

5.6 Subscriber Contracts.

The Grantee shall file with the Commission any standard form Subscriber contract utilized by Grantee. If no such written contract exists, the Grantee shall file with the Commission a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday.

5.7 Service Credit.

5.7.1 In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing cycle.

5.7.2 If, for any reason, Service is interrupted for a total period of more than twenty-four (24) hours in any thirty (30) day period, Subscribers shall, upon request, be credited pro rata for such interruption.

5.8 Refunds or Credits.

5.8.1 Any refund checks shall be issued promptly, but not later than either:

5.8.1.1 the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

5.8.1.2 the return of the equipment supplied by the Grantee if Service is terminated.

5.8.2 Any credits for Service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

5.9 Late Fees.

Fees for the late payment of bills shall not be assessed until after the Service has been fully provided. Late fee amounts on file with the Commission shall not be adjusted by the Grantee without the Commission's prior approval.

5.10 Notice to Subscribers.

5.10.1 The Grantee shall provide each Subscriber at the time Cable Service is installed, and at least every twelve (12) months thereafter, the following material:

- 5.10.1.1** instructions on how to use the Cable Service;
- 5.10.1.2** billing and complaint procedures, and written instructions for placing a service call, filing a complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);
- 5.10.1.3** a schedule of rates and charges, channel positions and a description of products and services offered, including any free or universal service;
- 5.10.1.4** prices and options for programming services and conditions of subscription to programming and other services; and
- 5.10.1.5** a description of the Grantee's installation and service maintenance policies, Subscriber privacy rights, internet/Cable Modem policies and privacy rights (only at installation of such service), delinquent Subscriber disconnect and reconnect procedures and any other of its policies applicable to Subscribers.

5.10.2 Copies of materials specified in the preceding subsection shall be provided to the Commission upon request.

5.10.3 All Grantee promotional materials, announcements and advertising of Cable Service to Subscribers and the general public, where price information is listed in any manner, shall be clear, concise, accurate and understandable.

5.11 Exclusive Contracts and Anticompetitive Acts Prohibited.

5.11.1 The Grantee may not require a residential Subscriber to enter into an exclusive contract as a condition of providing or continuing Cable Service.

5.11.2 The Grantee shall not engage in acts prohibited by Federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service in the City.

5.12 Office Availability and Drop Boxes.

- 5.12.1** The Grantee shall install, maintain and operate, throughout the term of this Franchise, a single drop box at a location agreed upon by the Commission and the Grantee. Additional drop boxes may be installed at other locations. Drop boxes shall be emptied at least once a day, Monday through Friday, with the exception of legal holidays, and payments shall be posted to Subscribers' accounts within forty-eight (48) hours of pick-up. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the Grantee to empty a drop box as specified herein, or to properly credit a Subscriber for a payment timely made.
- 5.12.2** After consultation with the Commission, the Grantee shall provide Subscribers with at least sixty (60) days' prior notice of any change in the location of the customer service center(s) serving the Quad Cities System, which notice shall apprise Subscribers of the customer service center's new address, and the date the changeover will take place.

SECTION 6.

ACCESS CHANNEL(S) PROVISIONS

6.1 Public, Educational and Government Access.

6.1.1 The City or its designee shall operate, administer, promote, and manage PEG access programming on the Cable System.

6.1.2 The Grantee shall continue to dedicate and make available four (4) 6 MHz analog video channels for public, educational, governmental and religious use. The four (4) 6 MHz PEG Access Channels shall be allocated as follows on the Effective Date of this Franchise:

6.1.2.1 one (1) full-time 6 MHz analog video channel for Noncommercial City Government Access Channel use, designed, constructed and activated for discrete transmissions;

6.1.2.2 one (1) full-time 6 MHz analog video channel for Noncommercial Public Access Channel use; and

6.1.2.3 two (2) full-time 6 MHz analog video channels for Noncommercial Public, Educational, religious and/or Government Access Channel use, to be programmed by the Commission, in its sole discretion.

The Commission shall have the right to rename, reprogram or otherwise change the use of these channels at any time, in its sole discretion, provided such use is Noncommercial and public, educational, governmental or religious in nature. Nothing herein shall diminish any rights of the Commission to secure additional PEG channels pursuant to Minn. Stat. § 238.084, which is expressly incorporated herein by reference.

6.1.3 Public Access Channel 15 and Government Access Channel 16 shall not be relocated without the consent of the Commission. If the Commission agrees to change the channel designation for Public Access Channel 15 and/or Government Access Channel 16, the Grantee must provide at least three (3) months notice to the Commission prior to implementing the change, and shall reimburse the City, the Commission and/or PEG entity for any reasonable costs incurred for: (i) purchasing or modifying equipment, business cards, and signage; (ii) any marketing and notice of the channel change that the Commission, the City and/or PEG entity reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected PEG channel(s) during the twelve-month period preceding the effective date of the channel change. Alternatively, the Grantee may choose to supply necessary equipment itself, provided such equipment is satisfactory to the City, the Commission or PEG entity.

6.1.4 Prior to the completion of the System Upgrade, the Grantee shall have the right to relocate each of the PEG channels (other than Public Access Channel 15 and Government Access Channel 16), one time without the Commission's consent, and without reimbursing the City or the Commission for any costs it incurs as a result of the relocation. If a qualified PEG channel has been relocated once without Commission approval, that channel may not be moved again unless: (i) the Commission has consented to the move; and (ii) the Grantee reimburses the Commission, the City and/or a PEG entity for all reasonable costs of such move, as described below, and provides at least three (3) months notice to the Commission, the City and/or PEG entity before making the change in channel designation. After the System Upgrade is completed, no PEG channel shall be relocated without the mutual consent of the Commission and the Grantee. If the Grantee and the Commission agree to change the channel designation for a PEG channel, the Grantee must provide at least three (3) months notice to the Commission prior to implementing the change, and shall reimburse the City, the Commission and/or PEG entity for any reasonable costs incurred for: (i) purchasing or modifying equipment, business cards, and signage; (ii) any marketing and notice of the channel change that the City and/or the Commission reasonably determines is necessary; (iii) logo changes; and (iv) promoting, marketing and advertising the channel location of the affected PEG channel(s) during the twelve-month period preceding the effective date of the channel change. Alternatively, the Grantee may choose to supply necessary equipment itself, provided such equipment is satisfactory to the City, the Commission or PEG entity. Notwithstanding anything to the contrary, the Grantee shall not be required to repay any school for any on-premises school expenses that arise out of any PEG channel relocation.

6.1.5 As long as the Grantee's System carries Basic Cable Service channels in analog form, the Grantee must make the PEG channels available in analog form to Subscribers within the City. If and when the Grantee's Cable System carries PEG channels in digital form, those digital PEG channels must be made available as a digital service to all Subscribers in the City. At all times, the Grantee's Cable System must make the PEG channels available to all Basic Cable Service Subscribers residing within the City in at least one format (digital or analog); thus, the Grantee shall make the PEG channels available to all such Subscribers in analog form unless and until it makes Basic Cable Service channels available to Subscribers only in digital form. If the Grantee opts to carry PEG channels in a digital format, it shall assume the cost of replacing all equipment necessary to ensure that PEG signals can be produced and transmitted on the Grantee's digital service tier.

6.1.6 In the event the Grantee makes any change in the System and related equipment and facilities or in signal delivery technology, which change directly or indirectly causes the signal quality or transmission of PEG channel programming or PEG services to fall below technical standards under applicable law, the

Grantee shall, at its own expense, provide any necessary technical assistance, transmission equipment, and training of PEG personnel, and in addition, provide necessary assistance so that PEG facilities may be used as intended, including, among other things, so that live and taped programming can be cablecasted efficiently to Subscribers.

6.1.7 All PEG channels shall be transmitted in the same format as all other Basic Cable Service channels and shall be carried on the Basic Service tier.

6.1.8 The Commission shall be responsible for switching PEG signals and Institutional Network transmissions.

6.2 PEG Support Obligations.

6.2.1 In addition to the franchise fee required under this Franchise, the Grantee shall collect from Subscribers via an itemization on customer bills ("PEG Fee") and pay quarterly to the Commission an amount equal to 2.5 percent of its Gross Revenues (the "Quarterly Support Grant"). Payment of the Quarterly Support Grant shall be made to the Commission within thirty (30) days of the end of each of the Grantee's fiscal quarters together with a report showing the basis for the computation. The Commission shall have the right to require further supporting information for each Quarterly Support Grant. All amounts paid under this paragraph shall be subject to audit and re-computation by the Commission in accordance with the rights provided to the City pursuant to Section 8.3 of this Franchise.

6.2.2 In addition to the Quarterly Support Grant, the Grantee shall make the following capital support payments:

6.2.2.1 a one-time payment of \$200,000 (the "Initial Capital Support Grant") to be used for PEG facilities and/or PEG equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment). Payment of the Initial Capital Support Grant shall be made to the Commission in one lump sum within fifteen (15) days after the Effective Date of this Franchise. The Commission, in its sole discretion, shall allocate the Initial Capital Support Grant.

6.2.2.2 a one-time payment of \$300,000 ("Supplemental Capital Support Grant I") to be used for PEG facilities and/or equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment). Payment of Supplemental Capital Support Grant I shall be made to the Commission in one lump sum ninety (90) days after the Effective Date of this Franchise. The Commission, in its sole discretion, shall allocate Supplemental Capital Support Grant I.

6.2.2.3 a one-time payment of \$200,000 ("Supplemental Capital Support Grant

II”), adjusted by CPI, to be used for PEG facilities and/or equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment). Payment of Supplemental Capital Support Grant II shall be made to the Commission in one lump on the second anniversary of the Effective Date of this Franchise.

The Commission, in its sole discretion, shall allocate Supplemental Capital Support Grant II.

- 6.2.2.4** an annual equipment grant of \$40,000 (the “Equipment Grant”), to be allocated by the Commission in its sole discretion. The Equipment Grant shall be increased by CPI on an annual basis, and shall be paid to the Commission no later than January 15 of each year beginning in 2001.
- 6.2.2.5** The Grantee may (i) treat the Initial Capital Support Grant, Supplemental Capital Support Grant I, Supplemental Capital Support Grant II and the Equipment Grant as a franchise requirement and (ii) pass the amount paid pursuant to this paragraph through to Subscribers as an external cost, and may itemize the amount attributable to these grants on Subscribers’ monthly bills, either as part of the PEG Fee or as a separate line item, all in accordance with applicable federal law.
- 6.2.3** In the event any payment required by this Section 6.2 is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%). The Grantee waives any rights to claim that any interest or penalties imposed hereunder constitute franchise fees within the meaning of 47 U.S.C. §542. Failure to pay required amounts shall also be a violation of this Franchise, subject to all sanctions herein.
- 6.2.4** The Grantee and the City agree that in the event of a federal or State statutory change that entirely eliminates the Grantee’s obligation to pay a franchise fee, then the Grantee shall continue to pay to the City as PEG support an amount equivalent to the prior year’s franchise fee. Said PEG support shall continue for one (1) year during which time the Grantee and the City shall engage in good faith negotiations regarding PEG support obligations. This paragraph shall not apply if the Grantee is required to pay a franchise fee to another entity (including, but not limited to, the State) rather than to the City.
- 6.2.5** The Grantee shall provide, at the time of the System Upgrade, at no cost to the City, the Commission and I-Net Users, the fiber-optic or other cabling, switching systems and other electronics, equipment, software and other materials necessary to route (i) PEG signals from their origination point through the Commission’s master control to the appropriate subscriber network channel, including channels provided discretely, and (ii) I-Net signals to and from

institutions and to and from institutions to Subscribers. The Grantee shall continue to have this obligation regardless of where the Commission's master control or the pertinent headend or hub is located. Provided, however, if the Commission moves its master control from 737 East River Road, Anoka, Minnesota, it shall reimburse the Grantee for the Actual Cost of any additional facilities that need to be constructed or provided to transport the signals to the new location.

6.3 Regional Channel 6.

The Grantee shall designate standard VHF Channel 6 for uniform regional channel usage to the extent required by State law.

6.4 Leased Access Channels.

The Grantee shall provided Leased Access Channels as required by federal and State law.

6.5 Universal PEG Tier.

- 6.5.1** The Grantee shall offer the following services and benefits to all current and potential Subscribers whose dwelling units are passed by cable plant: (i) the Universal PEG Tier, free of charge; (ii) free Installation of a service Drop; and (iii) one free cable television outlet.
- 6.5.2** The Universal PEG Tier shall be offered by the Grantee for the term of the Franchise, unless the Grantee (or its successors) and the Commission mutually agree to suspend or terminate the Universal PEG Tier program.
- 6.5.3** The Grantee agrees to provide, at no cost to Universal PEG Tier Subscribers, an A/B switch and all cable-related equipment necessary to allow reception of local broadcast stations on a Universal PEG Tier Subscriber's television receiver, provided said television receiver is capable of receiving broadcast television signals. For purposes of this provision the term "cable-related equipment" shall not include antennas, antenna wires, video cassette recorders or similar devices.
- 6.5.4** The Grantee and the City agree that the rates charged to Subscribers will not increase as a result of the Grantee's implementation of the Universal PEG Tier program, except that the Grantee may pass the expense of the Universal PEG Tier through to Subscribers as an external cost, and may itemize the amount attributable to the Universal PEG Tier on Subscribers' monthly billing statements. The amount recovered by the Grantee each month shall not exceed \$0.07 per Subscriber, and shall not reduce the amount of the PEG support furnished to the Commission and the City under this Franchise. The Grantee shall, on an annual basis, provide the City with a reconciliation of amounts collected and expended related to the provision of the Universal PEG Tier. The Grantee agrees to adjust

the Universal PEG Tier fee for any overpayment or underpayment.

- 6.5.5** Notice of the availability of the Universal PEG Tier shall be provided in the informational package that is provided to Subscribers on an annual basis, and in promotional materials that shall be sent to potential Subscribers each year.
- 6.5.6** Should a Universal PEG Tier Subscriber require or request a set-top terminal device or other equipment not essential to the reception of the Universal PEG Tier, or should a Universal PEG Tier Subscriber require a Drop that exceeds 150 feet in length, the Universal PEG Tier Subscriber shall be responsible for paying the regulated charges for such equipment, and for the additional costs associated with installing a drop in excess of 150 feet. "Additional costs," as used in this paragraph, shall mean the Grantee's total Installation costs, less the Installation costs that the Grantee would incur by constructing a standard 150-foot Drop.
- 6.5.7** For purposes of this Section 6.5, the following definitions shall apply:
 - 6.5.7.1** "Universal PEG Tier" shall mean all PEG channels identified in this Franchise or subsequently added pursuant to the Franchise.
 - 6.5.7.2** "Drop" shall mean an aerial or underground cable, not to exceed 150 feet in length, that runs from the nearest connection point on a feeder cable to the point of connection in a Subscriber's dwelling unit.

6.6 Costs and Payments not Franchise Fees.

The parties agree that any costs to the Grantee associated with the provision of support for PEG access or the Institutional Network pursuant to Section 6 and 7 of this Franchise do not constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542.

SECTION 7.

INSTITUTIONAL NETWORK (I-NET) PROVISIONS

AND RELATED COMMITMENTS

7.1 Institutional Network Facilities and Capacity.

- 7.1.1** The Grantee shall, at no cost to the City (and its agencies and departments), the Commission and the institutions designated in Exhibit A to receive Institutional Network service (collectively, the "I-Net Users"), construct, activate and maintain an Institutional Network that consists of the following facilities; (i) six (6) bi-directional fiber optic lines to each I-Net Node; and (ii) bi-directional coaxial cable links between the sites designated in Exhibit A to receive Institutional Network service (the "I-Net Sites") and the nearest I-Net Node. If a new City Hall facility is constructed or established during the term of this Franchise, the Grantee shall connect the new site to the Institutional Network, free of charge. The City (and its departments and agencies), the Commission and all institutions located at the I-Net Sites shall have exclusive use of all I-Net capacity, to the extent provided in subsection 7.2. I-Net Users may not sell or resell services or capacity to any third party. However, I-Net Users may provide video, voice and data services to themselves, including those which the Grantee otherwise sells to others. The limitations of this paragraph shall not prevent I-Net Users from subleasing, bartering, selling, reselling or giving away capacity on the Institutional Network to any other public or nonprofit entity for noncommercial purposes that do not directly compete with any products or services offered by the Grantee.
- 7.1.2** The I-Net shall provide 450 MHz of activated capacity with no less than 54 standard video (6 MHz) channels (at least 23 upstream channels and at least 31 downstream channels) to the I-Net Sites. The entire I-Net shall be tested before the date of I-Net activation. If any segment does not pass the Grantee's performance test(s), the Grantee shall take all steps necessary to meet applicable standards, and the affected segment shall be retested. At the Commission's request, the Grantee shall send the Commission the results of each test conducted under this paragraph.
- 7.1.3** All I-Net distribution system power supplies shall have the standby capability of providing at least three (3) hours of backup power. Prior to battery failure, the Grantee shall connect I-Net power supplies to portable generators capable of producing adequate electrical current until commercial power is restored.
- 7.1.4** The Grantee shall connect the I-Net Sites to the Institutional Network pursuant to Exhibit A, at no cost to the City, the Commission or I-Net Users. Other governmental, public or educational institutions subsequently designated by the City shall be connected to the I-Net via coaxial cable, free of charge, if the

designated institution is located less than five hundred (500) feet from the existing I-Net, or if such designated institution agrees to reimburse the Grantee for its Actual Costs in excess of the cost of the first 500 feet of such installation. Notwithstanding the foregoing, any new City Hall facilities shall be connected to the I-Net via coaxial cable at no charge to the City, the Commission or any other I-Net Users.

7.1.5 Notwithstanding anything to the contrary in this Franchise, the Grantee shall connect the Ramsey Fire Department building located at 15050 Armstrong Boulevard , NW, Ramsey, Minnesota (the "Ramsey Fire Hall") to the I-Net (the "Ramsey Fire Hall I-Net Connection"). In accordance with this Franchise, the Ramsey Fire Hall I-Net Connection shall be completed and successfully activated consistent with the diagram attached as Exhibit C no later than December 31, 2002. If at the time of the I-Net upgrade the Ramsey Fire Hall will continue to house Ramsey's City Council chambers for a period of at least twelve more months, the Grantee shall construct, equip and activate the Ramsey Fire Hall I-Net Connection at no charge to the City, the Commission or other I-Net Users. However, if at the time of the I-Net Upgrade Ramsey's City Council chambers will continue to be housed in the Ramsey Fire Hall for less than twelve months, the Commission or the appropriate I-Net User shall reimburse the Grantee for its Actual Cost of installing the Ramsey Fire Hall I-Net Connection in excess of the Actual Cost of the first 500 feet of construction from the existing Institutional Network. Prior to the activation of the Ramsey Fire Hall I-Net Connection, the Grantee shall provide Ramsey with the following: (i) sufficient upstream bandwidth on the subscriber network to transport a 6 MHz analog video channel to Grantee's headend or hub, as appropriate; and (ii) all transmission equipment and materials necessary to originate and transmit video signals from the Ramsey Fire Hall through the Grantee's System to Ramsey's discrete Governmental Access Channel (collectively, the "Temporary Upstream Feed") and then on to Subscribers. The Grantee shall complete and activate the Temporary Upstream Feed no later than the Effective Date of this Franchise. The Temporary Upstream Feed shall remain fully operational until such time as the Ramsey Fire Hall I-Net Connection passes all applicable tests, as specified in subsection 7.1.2, and is successfully activated. At all times, the combination of the downstream subscriber network and the Temporary Upstream Feed or the Ramsey Fire Hall I-Net Connection shall meet or exceed FCC technical standards at all Subscriber locations. The Grantee shall provide, install and maintain the Temporary Upstream Feed at no charge to the City, the Commission or I-Net Users. The Grantee may pass all direct costs associated with the Ramsey Fire Hall I-Net Connection and the Temporary Upstream Feed through to all Subscribers as an external cost and may itemize such costs on all Subscribers' monthly billing statements as part of the PEG Fee or as a separate line item entitled "institutional network," all in accordance with applicable law.

7.1.6 I-Net Users shall be responsible for providing any end-user or interface equipment needed for transmission or reception of signals. Notwithstanding the

foregoing, the Grantee shall, at the Commission's request, provide at no charge to the City, the Commission or I-Net Users up to twenty (20) new modulators for City and/or Commission use.

7.2 Grantee's Use of I-Net Capacity.

The I-Net shall be for the exclusive use of the City, the Commission and other I-Net Users throughout the term of the Franchise. Notwithstanding the foregoing, the Grantee may use capacity on the I-Net, including for lease or other commercial purposes, provided that the City, the Commission and I-Net Users are not using such capacity and further provided that the Grantee's use does not interfere with use of the I-Net by the City, the Commission, or I-Net Users. Upon receiving oral or written notice from the Commission, the Grantee or a lessee shall immediately cease using the I-Net for any purpose that the Commission, in its sole discretion, determines is interfering with I-Net Users' communications. Use of the I-Net by the City, the Commission and I-Net Users shall, at all times, have priority over any use(s) by the Grantee or any lessee. The Grantee or a lessee shall terminate its use of any channel capacity on the I-Net within three (3) months after receiving notice from the Commission that the City, the Commission or any I-Net User has determined to use such capacity. Any agreement entered into by the Grantee and a third party for the lease of I-Net capacity shall be subject to the terms and conditions of this Franchise.

7.3 I-Net Performance Standards.

The Grantee shall maintain the I-Net in accordance with technical and performance standards set forth in Exhibit B (I-Net Performance Standards), which is made a part hereof. The Grantee shall provide the City, or its designee, upon request, with reports of the performance of the I-Net and the Grantee's compliance with the aforementioned technical and performance standards.

7.4 Institutional Network Security.

The Grantee and the Commission shall at all times use reasonable efforts to protect the security of the Institutional Network. For purposes of this paragraph, "to protect security" means to protect those physical elements of the Institutional Network under the party's direct control from unauthorized intrusion, signal theft, tampering, wiretapping or other actions that might: (i) compromise the integrity of or degrade the signals carried over the Institutional Network; or (ii) result in the unauthorized interception and disclosure of information.

7.5 Interconnection and Use of Adjacent Institutional Networks.

7.5.1 Concurrent with the System Upgrade, the Grantee shall construct interconnection links to the Institutional Networks of Grantee's Systems serving: (i) the City of Coon Rapids, Minnesota; (ii) the member cities of the North Metro Telecommunications Commission; and (iii) the member cities of the Northwest

Suburban Cable Communication Commission (“Adjacent Institutional Networks”). Each interconnection link shall be completed within a reasonable timeframe mutually agreed upon by the Commission and the Grantee, unless an extension is granted upon petition by the Grantee. The Grantee shall be responsible for switching all signals carried over the interconnection links described in this paragraph, including signals that are originated by or intended for the City, Commission or I-Net Users.

7.5.2 Every interconnection link established pursuant to this Section 7.5 shall, at a minimum: (A) use a fiber optic transmission medium (B) allow for the seamless transmission of all required I-Net signals on both systems; and (C) provide, for the Commission’s exclusive use, at least one (1) 6 MHz analog channel for forward video purposes, one (1) 6 MHz analog channel for return video purposes, one (1) 6 MHz channel for forward data and/or other purposes and one (1) 6 MHz analog channel for return data and/or other purposes.

7.5.3 The Grantee shall cooperate with any interconnection corporation, regional interconnection authority, or state or federal agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the City.

7.5.4 At the Commission’s request, the Grantee shall use its best efforts to obtain any required authorization from the North Metro Telecommunications Commission, the Northwest Suburban Cable Commission and the City of Coon Rapids, Minnesota (the “Adjacent Commissions”) that is necessary to allow the Commission, the City and I-Net Users to utilize capacity on the Adjacent Institutional Networks. In the event the Grantee is unable to obtain such authorization after using its best efforts, or if the Adjacent Institutional Networks are not under the control of the Adjacent Commissions, the Grantee shall provide the Commission, the City and/or I-Net Users with available bandwidth on the Adjacent Institutional Networks, free of charge, as follows: if capacity on the Adjacent Institutional Networks is available and under the Grantee’s control (or if the Grantee has I-Net capacity available to it under the terms of its franchises with the Adjacent Commissions) the Grantee shall dedicate and furnish for Commission, City or I-Net User use the greater of 12 MHz of bandwidth, or the maximum amount of bandwidth available and under Grantee’s control, up to 12 MHz. Upon request, the Grantee shall make additional Adjacent Institutional Network capacity available to the Commission, the City and I-Net Users at Actual Cost, provided that additional bandwidth is available and under the Grantee’s control. In no event shall Grantee have any obligation or be responsible for providing any additional equipment as a result of this subsection.

7.6 Subscriber Network Drops to Designated Buildings.

7.6.1 Grantee shall provide, free of charge, Installation and activation of one (1)

subscriber network Drop, and one (1) cable outlet at those institutions currently receiving such facilities, and the institutions identified and designated for such facilities in Exhibit A, which is attached hereto and made a part hereof.

- 7.6.2** The Grantee shall provide Basic Cable Service and any equipment necessary to receive such service, free of charge, to those institutions currently receiving Basic Cable Service, and the institutions identified and designated for such service in Exhibit A. Institutions currently receiving additional Cable Services from the Grantee, free of charge, shall continue to receive those same services, or comparable services, during the term of this Franchise, free of charge.
- 7.6.3** Additional subscriber network Drops and/or outlets will be installed at designated institutions by the Grantee on an Actual Cost basis. Alternatively, said institution may add outlets at its own expense, as long as such Installation meets the Grantee's standards. The Grantee shall have three (3) months from the date of City designation of additional institution(s) to complete construction of the Drop and outlet, unless weather or other conditions beyond the control of the Grantee require more time.

SECTION 8.

OPERATION AND ADMINISTRATION PROVISIONS

8.1 Administration of Franchise.

The City's designated cable television administrator shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise and law.

8.2 Delegated Authority.

The City may appoint a citizen advisory body or may delegate to any other body or Person authority to administer the Franchise and to monitor the performance of the Grantee pursuant to the Franchise. The Grantee shall cooperate with any such delegate of the City.

8.3 Franchise Fee.

8.3.1 During the term of the Franchise, the Grantee shall pay quarterly to the City or its delegate a Franchise fee in an amount equal to five percent (5%) of its Gross Revenues.

8.3.2 Any payments due under this provision shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation. The City shall have the right to require further supporting information for each franchise fee payment.

8.3.3 All amounts paid shall be subject to audit and re-computation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. The Grantee shall be responsible for providing the City all records necessary to confirm the accurate payment of franchise fees. The Grantee shall maintain such records for five (5) years, unless in the Grantee's ordinary course of business specific records are retained for a shorter period, but in no event less than three (3) years. If an audit discloses an overpayment or underpayment of franchise fees, the City shall notify the Grantee of such overpayment or underpayment. The City's audit expenses shall be borne by the City unless the audit determines that the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the City as a result of the audit shall be paid to the City within thirty (30) days following written notice

to the Grantee by the City of the underpayment, which notice shall include a copy of the audit report. If the re-computation results in additional revenue to be paid to the City, such amount shall be subject to a ten percent (10%) annual interest charge. If the audit determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly payment.

8.3.4 In the event any franchise fee payment or re-computation amount is not made on or before the required date, the Grantee shall pay, during the period such unpaid amount is owed, the additional compensation and interest charges computed from such due date, at an annual rate of ten percent (10%).

8.3.5 Nothing in this Franchise shall be construed to limit any authority of the City to impose any tax, fee or assessment of general applicability.

8.3.6 The franchise fee payments required by this Franchise shall be in addition to any and all taxes or fees of general applicability. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or against any of said taxes or fees of general applicability, except as expressly permitted by law. The Grantee shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said taxes or fees of general applicability, except as expressly permitted by law. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said taxes or fees of general applicability as a deduction or other credit from or against any of its franchise fee obligations, except as expressly permitted by law.

8.4 Access to Records.

The City shall have the right to inspect, upon reasonable notice and during Grantee's administrative office hours, or require Grantee to provide within a reasonable time, on a confidential and proprietary basis, copies of any records maintained by Grantee or its Affiliates, including specifically Gross Revenues worksheets, and accounting and financial records maintained by Grantee which relate to compliance of System operations with this Franchise or other applicable law.

8.5 Reports and Maps to be Filed with City.

8.5.1 The Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in a form and substance as required by City.

8.5.2 The Grantee shall prepare and furnish to the City, at the times and in the form prescribed, such other reports with respect to Grantee's operations pursuant to this Franchise as the City may require. The City shall use its best efforts to protect proprietary or trade secret information all consistent with state and federal

law.

- 8.5.3** If required by the City, the Grantee shall furnish to and file with the City the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with the City updates of such maps, plats and permanent records annually if changes have been made in the System.

8.6 Periodic Evaluation.

- 8.6.1** The City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to the Grantee.
- 8.6.2** Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.
- 8.6.3** As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise that are both economically and technically feasible.

SECTION 9.

GENERAL FINANCIAL AND INSURANCE PROVISIONS

9.1 Performance Bond.

- 9.1.1** At the time the Franchise becomes effective and at all times thereafter, until the Grantee has liquidated all of its obligations with the City and the Commission, the Grantee shall furnish a bond to the Commission in the amount of \$100,000.00 in a form and with such sureties as are reasonably acceptable to the Commission. This bond will be conditioned upon the faithful performance by the Grantee of its Franchise obligations and upon the further condition that in the event the Grantee shall fail to comply with any law, ordinance or regulation governing the Franchise, there shall be recoverable jointly and severally from the principal and surety of the bond any damages or loss suffered by the Commission or City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City or the Commission which arise by reason of the construction, operation, or maintenance of the System. The rights reserved by the City and the Commission with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law. The City may, from year to year, in its sole discretion, reduce the amount of the bond.
- 9.1.2** The time for Grantee to correct any violation or liability shall be extended by City if the necessary action to correct such violation or liability is, in the sole determination of City, of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) day cure period and thereafter uses reasonable diligence to correct the violation or liability.
- 9.1.3** In the event this Franchise is revoked by reason of default of Grantee, City shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by City as a result of said default or revocation.
- 9.1.4** Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains sixty (60) days after the expiration of the term of the Franchise or revocation for default thereof, provided City or the Commission has not notified Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.
- 9.1.5** The rights reserved to City or Commission with respect to the performance bond are in addition to all other rights of City or Commission whether reserved by this

Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right City or the Commission may have.

9.2 Letter of Credit.

- 9.2.1** On the Effective Date of this Franchise, the Grantee shall deliver to the Commission an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the Commission, from a National or State bank approved by the Commission, in the amount of \$25,000.00.
- 9.2.2** The Letter of Credit shall provide that funds will be paid to the City upon written demand of the City, and in an amount solely determined by the City in payment for penalties charged pursuant to this Section, in payment for any monies owed by the Grantee to the City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by the City or any Person as a result of any acts or omissions by the Grantee pursuant to this Franchise.
- 9.2.3** In addition to recovery of any monies owed by the Grantee to the City or any Person or damages to the City or any Person as a result of any acts or omissions by the Grantee pursuant to the Franchise, the City in its sole discretion may charge to and collect from the Letter of Credit the following penalties:
- 9.2.3.1** For failure to timely complete the System Upgrade as provided in this Franchise, unless the City or the Commission approves the delay, the penalty shall be \$500.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.2** For failure to provide data, documents, reports or information or to cooperate with City or the Commission during an application process or system review or as otherwise provided herein, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.3** Fifteen (15) days following notice from City or Commission of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.4** For failure to provide the services and the payments required by this Franchise, including, but not limited to, the implementation and the utilization of the PEG Access Channels, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.3.5** For Grantee's breach of any written contract or agreement with or to the City or the Commission, the penalty shall be \$250.00 per day for each

day, or part thereof, such breach occurs or continues.

- 9.2.3.6** For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this subsection 9.2.3, the penalty shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.
- 9.2.4** Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.
- 9.2.5** Whenever the City or the Commission determines that the Grantee has violated one or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subsection 9.2.3 above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the determination of the City or the Commission, is necessary to cure the alleged violation) following local receipt of notice, provided the Grantee remains in violation of one or more terms, conditions or provisions of this Franchise, in the sole opinion of the City, the City may draw from the Letter of Credit all penalties and other monies due the City from the date of the local receipt of notice.
- 9.2.6** Whenever the Letter of Credit is drawn upon, the Grantee may, within seven (7) days of the withdrawal, notify the City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the City shall specify with particularity the matters disputed by Grantee. All penalties shall continue to accrue and the City may continue to draw from the Letter of Credit during any appeal pursuant to this subparagraph 9.2.6.
- 9.2.6.1** City or the Commission shall hear Grantee's dispute within sixty (60) days and the City shall render a final decision within sixty (60) days thereafter.
- 9.2.6.2** Upon the determination of the City that no violation has taken place, the City shall refund to Grantee, without interest, all monies drawn from the Letter of Credit by reason of the alleged violation.
- 9.2.7** If said Letter of Credit or any subsequent Letter of Credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in Subsection 9.2.1 of this Section.
- 9.2.8** If the City draws upon the Letter of Credit or any subsequent Letter of Credit delivered pursuant hereto, in whole or in part, the Grantee shall replace or

replenish to its full amount the same within ten (10) days and shall deliver to the City a like replacement Letter of Credit or certification of replenishment for the full amount stated in Section 9.2.1 as a substitution of the previous Letter of Credit. This shall be a continuing obligation for any withdrawals from the Letter of Credit.

9.2.9 If any Letter of Credit is not so replaced or replenished, the City may draw on said Letter of Credit for the whole amount thereof and use the proceeds as the City determines in its sole discretion. The failure to replace or replenish any Letter of Credit may also, at the option of the City, be deemed a default by the Grantee under this Franchise. The drawing on the Letter of Credit by the City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of the Grantee that are in default, shall not be a waiver or release of such default.

9.2.10 The collection by City of any damages, monies or penalties from the Letter of Credit shall not affect any other right or remedy available to it, nor shall any act, or failure to act, by the City pursuant to the Letter of Credit, be deemed a waiver of any right of the City pursuant to this Franchise or otherwise.

9.3 Indemnification of City.

9.3.1 The City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with Grantee's construction, operation, maintenance, repair or removal of the System or as to any other action of Grantee with respect to this Franchise.

9.3.2 Grantee shall indemnify, defend, and hold harmless the City and its officers, boards, committees, commissions, elected and appointed officials, employees, volunteers and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the City's exercise, administration, or enforcement of the Franchise.

9.3.3 Nothing in this Franchise relieves a Person, except the City, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, re-grading, or changing the line of a Right-of-Way or public place or with the construction or reconstruction of a sewer or water system.

9.3.4 Related only to PEG programming, the Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City or its officers, boards, committees, commissions, elected or appointed officials, employees, volunteers or agents, including any loss or claims.

9.4 Insurance.

- 9.4.1** As a part of the indemnification provided in this Franchise, but without limiting the foregoing, Grantee shall file with Commission at the time of its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including broadcaster's/cablecaster's liability and contractual liability coverage, in protection of the Grantee, the Commission, the City and its officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers for any and all damages and penalties which may arise as a result of this Franchise. The policy or policies shall name the City and the Commission as an additional insured, and in their capacity as such, City and Commission officers, elected and appointed officials, boards, commissions, commissioners, agents, employees and volunteers. The broadcasters/cablecasters' liability coverage specified in this provision shall be subject to this Franchise regarding indemnification of the City.
- 9.4.2** The policies of insurance shall be in the sum of not less than \$1,000,000.00 for personal injury or death of any one Person, and \$2,000,000.00 for personal injury or death of two or more Persons in any one occurrence, \$1,000,000.00 for property damage to any one person and \$2,000,000.00 for property damage resulting from any one act or occurrence.
- 9.4.3** The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the City.
- 9.4.4** Grantee shall keep on file with the Commission Certificates of Insurance.
- 9.4.5** Failure to comply with the insurance requirements of this Section shall constitute a material violation of this Franchise.

SECTION 10.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

10.1 City's Right to Revoke.

10.1.1 In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that:

10.1.1.1 Grantee has violated material provisions of this Franchise; or

10.1.1.2 Grantee has attempted to evade any of the provisions of the Franchise; or

10.1.1.3 Grantee has practiced fraud or deceit upon the City or the Commission.

City may revoke this Franchise without the hearing required by Section 10.2.2 herein if Grantee is adjudged a bankrupt entity.

10.2 Procedures for Revocation.

10.2.1 The City shall provide the Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required herein, the City shall provide the Grantee with the basis for revocation.

10.2.2 The Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in Subparagraph 10.2.1 above. The City shall provide the Grantee with written notice of its decision together with written findings of fact supplementing said decision.

10.2.3 Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may the Grantee appeal said decision with an appropriate state or federal court or agency.

10.2.4 During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

10.3 Abandonment of Service.

The Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. The Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from

the abandonment, including all costs incident to removal of the System, if required by the City pursuant to Section 10.4.

10.4 Removal After Abandonment, Termination or Forfeiture.

10.4.1 In the event of termination or forfeiture of the Franchise or abandonment of the System, the City shall have the right to require the Grantee to remove all or any portion of the System from all rights-of-way and public property within the City.

10.4.2 If the Grantee has failed to commence removal of the System, or such part thereof as was designated by the City, within thirty (30) days after written notice of the City's demand for removal is given, or if the Grantee has failed to complete such removal within twelve (12) months after written notice of the City's demand for removal is given, the City shall have the right to apply funds secured by the Letter of Credit and Performance Bond toward removal and/or declare all right, title, and interest to the System to be in the City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

10.5 Sale or Transfer of Franchise.

10.5.1 No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with the City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness. Upon notice to the City, Grantee may undertake legal changes necessary to consolidate the corporate or partnership structures of its Minnesota/Wisconsin Systems provided there is no change in the controlling interests that could materially alter the financial responsibilities for the Grantee.

10.5.2 Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 10.5. the term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new "controlling interest" shall be deemed to be created upon the acquisition through any transaction or related group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one Person. Acquisition by one Person of an interest of five percent (5%) or more in a single transaction shall require notice to the City.

10.5.3 The Grantee shall file, in addition to all documents, forms and information required to be filed by applicable law, the following:

10.5.3.1 All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof;

10.5.3.2 A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the SEC or MnDOT. Upon request, Grantee shall provide City with a complete copy of any such document; and

10.5.3.3 Any other documents or information related to the transaction as may be specifically requested by the City.

10.5.4 The City shall have such time as is permitted by federal law in which to review a transfer request.

10.5.5 Grantee shall reimburse City for all the reasonable legal, administrative, consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its Subscriber rates.

10.5.6 In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to Subsections 10.5.1 or 10.5.2 of this Section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations hereunder.

10.5.7 In the event of any proposed sale, transfer, corporate change, or assignment pursuant to Subsection 10.5.1 or 10.5.2, the City shall have the right to purchase the System for the value of the consideration proposed in such transaction. The City's right to purchase shall arise upon City's receipt of notice of the material terms of an offer or proposal for sale, transfer, corporate change, or assignment, which Grantee has accepted. Notice of such offer or proposal must be conveyed to City in writing and separate from any general announcement of the transaction.

10.5.8 The City shall be deemed to have waived its right to purchase the System pursuant to this Section only in the following circumstances:

10.5.8.1 If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 10.5.7 above, its intention to

exercise its right of purchase; or

10.5.8.2 It approves the assignment or sale of the Franchise as provided within this Section.

10.5.9 No Franchise may be transferred if the City determines the Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by the City. The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise.

10.5.10 Any transfer or sale of the Franchise without the prior written consent of the City shall be considered to impair the City's assurance of due performance. The granting of approval for a transfer or sale in one instance shall not render unnecessary approval of any subsequent transfer or sale for which approval would otherwise be required.

SECTION 11.

PROTECTION OF INDIVIDUAL RIGHTS

11.1 Discriminatory Practices Prohibited.

Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other applicable federal, State, and city laws.

11.2 Subscriber Privacy.

11.2.1 No signals, including signals of a Class IV Channel, may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year that may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV Channel activity planned for the purpose of monitoring individual viewing patterns or practices.

11.2.2 No lists of names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year that may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

11.2.3 Written permission from the Subscriber shall not be required for the conducting of System-wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in Subsection 11.2.2.

SECTION 12.

UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

12.1 Unauthorized Connections or Modifications Prohibited.

It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or to receive services of the System without Grantee's authorization.

12.2 Removal or Destruction Prohibited.

It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper with, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever, except for any rights the City may have pursuant to this Franchise or its police powers.

12.3 Penalty.

Any firm, Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty Dollars (\$20.00) and the costs of the action nor more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 13.

MISCELLANEOUS PROVISIONS

13.1 Franchise Renewal.

Any renewal of this Franchise shall be performed in accordance with applicable federal, State and local laws and regulations.

13.2 Work Performed by Others.

All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. The Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

13.3 Amendment of Franchise Ordinance.

The Grantee and the City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 8.6 or at any other time if the City and the Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to change in federal, State or local laws. Provided, however, nothing herein shall restrict the City's exercise of its police powers or the City's authority to unilaterally amend Franchise provisions to the extent permitted by law.

13.4 Compliance with Federal, State and Local Laws.

13.4.1 If any federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to State laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

13.4.2 In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required or necessitated by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise

changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

13.4.3 If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Person or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City without further action by the City.

13.4.4 The City and Grantee shall, at all times during the term of this Franchise, including all extensions and renewals thereof, comply with applicable federal, State and local laws and regulations.

13.5 Non-enforcement by City.

Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

13.6 Rights Cumulative.

All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

13.7 Grantee Acknowledgment of Validity of Franchise.

The Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

13.8 Force Majeure.

The Grantee shall not be deemed in default of provisions of this Franchise or the City Code where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods, or other causes beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such noncompliance, provided that the Grantee, when possible, takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible, under the circumstances, with the Franchise without unduly endangering the health, safety and integrity of the public, the rights-of-way, public property or private property.

13.9 Governing Law.

This Franchise shall be governed in all respects by the laws of the State of Minnesota.

13.10 Captions and References.

13.10.1 The captions and headings of sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of this Franchise. Such captions shall not affect the meaning or interpretation of this Franchise.

13.10.2 When any provision of the City Code is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the City Code that may also govern the particular matter in question.

13.11 Rights of Third Parties.

This Franchise is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, unless expressly provided herein.

13.12 Merger of Documents.

This Franchise, and the attachments hereto, constitute the entire Franchise agreement between the City and the Grantee, and supersede all prior oral or written franchises and understandings.

SECTION 14.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

14.1 Publication.

This Franchise shall be published in accordance with applicable local and Minnesota law.

14.2 Acceptance.

14.2.1 Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council and the enactment of a Franchise by the other member municipalities of the Commission, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to the Grantee shall be null and void.

14.2.2 Upon acceptance of this Franchise, the Grantee and the City shall be bound by all the terms and conditions contained herein. The Grantee agrees that this Franchise is not inconsistent with applicable law or regulations at the time it is executed.

14.2.3 Grantee shall accept this Franchise in the following manner:

14.2.3.1 This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

14.2.3.2 With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates required herein that are due but have not previously been delivered.

14.3 Binding Acceptance.

This Franchise shall bind and benefit the parties hereto and their respective authorized heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

Passed and adopted this 5th day of December, 2000.

ATTEST:

CITY OF ANDOVER, MINNESOTA

By: _____
Its: _____

By: _____
Its: _____

ACCEPTED: This Franchise is accepted and we agree to be bound by its terms and conditions.

MEDIAONE NORTH CENTRAL
COMMUNICATIONS CORPORATION
d/b/a AT&T BROADBAND

Dated: _____

By: _____
Its: _____

Exhibit B

Quad Cities I-Net Performance Standards

Upon completion of the I-Net upgrade specified in Section 7 of the Franchise:

I. Video Transmission

A. Video transmission will comply with the following performance standards:

1. Carrier to noise ratio = 45dB or better
2. Carrier to composite triple beat = 53dB or better
3. Carrier to composite second order = 55dB or better
4. Carrier to cross modulation = 55dB or better
5. System signal level variations (peak to valley) = $n/10+2$ or better for all coaxial cable portions of the I-Net (where N = the number of amplifiers in cascade).

B. Testing will occur twice yearly following the timing established in 47 C.F.R. § 76.601 and 76.605.

1. From the institution to the longest subscriber cascade.
2. From the institution through the applicable headend/hub site returning back to the same institution.
3. Performed using existing I-Net carriers active at the time of the testing, which will subject them to service interruptions.
4. Completed at Grantee-designated entry demarcation point at the institution.
5. The system will meet calculated worst case fully loaded video and audio measurements, taking into consideration existing I-Net data loading at the time the measurement is taken.
6. Under ordinary operating conditions.

II. Digital Transmission

A. For I-Net that is 50% or more coaxial cable, a Bit Error Rate of 1×10^{-8} at the demarcation point.

1. Outage times not included
2. Ordinary operating conditions

B. For I-Net that is 50% or more fiber optic cable, a Bit Error Rate of 1×10^{-9} at the demarcation point.

1. Outage times not included
2. Ordinary operating conditions

C. For both coaxial and fiber network, the company will meet or exceed a reliability factor of 99.965% on an annual basis.

D. Testing will occur twice yearly, during the months of January/February and

July/August.

III. Repair and Maintenance

- A. Grantee will provide a repair force of technicians capable of responding properly to all requests for service by I-Net Users and available on a 7x24x365 basis.
- B. Under normal operating conditions, the initial page to the technician on call will be within a 10 minute time frame. Barring situation that are outside the control of the Grantee (i.e., physical damage to the network caused by third parties not under the control of the Grantee, weather related restrictions, etc.), the Grantee will continue to work on a service problem until it is resolved, and complete its resolution of such problem within eight (8) hours, if resolution of such problem is within the control of the Grantee.
- C. Fiber, over and above that which is required by Section 7.1 of the Franchise, may be incorporated, where necessary, to reduce amplifier cascades to meet performance standards. Where possible, fiber Nodes may be located within the building or facility of an I-Net User.
- D. Preventative and routine maintenance of the I-Net shall be performed in the same time frame and in the same fashion as routine and preventative maintenance are performed for the Grantee's subscriber network. Actual or potential problems discovered during the course of preventative and routine maintenance shall be immediately reported to the Commission. After informing the Commission on an actual or potential problem, the Grantee shall, within a reasonable period of time, prepare and transmit a report to the Commission describing the corrective action, if any, that was or will be taken.
- E. I-Net Users will be notified at least seven days in advance of any scheduled maintenance that will interrupt service on the I-Net, unless I-Net Users agree to waive such time frame. Where possible, such maintenance will be scheduled at times of low usage.

**EXHIBIT A
QUAD CITIES INSTITUTION CONNECTIONS**

<u>Institution</u>	<u>Address</u>	<u>Sub-Net</u>	Footage To Extend <u>Sub-Net</u>	<u>I-Net</u> (2)	<u>Cable</u> <u>Modem</u> (3)	Footage To Extend <u>I-Net</u>	Estimated Cost Of I- Net Extension (1)
CITY OF ANDOVER							
Andover City Hall	1685 NW Crosstown Blvd.	Yes		Yes	Yes		
Andover Fire	1785 NW Crosstown Blvd.	Yes		Yes	No		
Andover Fire	13875 NE Crosstown Blvd.	Yes		No	No	830	\$ 4,980.00
Andover Fire	16603 NW Valley Drive	Yes		No	No	13,000	78,000.00
Andover Elementary	14950 Hanson Blvd.	Yes		Yes	Yes		
Oak View Middle School	15400 Hanson Blvd.	Yes		No	Yes	2,800	16,800.00
Crooked Lake Elementary	2939 NW Bunker Lake Blvd.	Yes		Yes	Yes		
Meadow Creek Christian School	2941 Bunker Lake Blvd.	Yes		Yes	Yes		
Anoka County Sheriff Station	1530 Bunker Lake Blvd.	No		No	No	12,375	74,250.00
New High School (unbuilt)	148th and Crosstown	Yes		Yes	Yes	1,000	6,000.00
New Elementary School	169th and Verdin	Yes		No	Yes	13,000	78,000.00
CITY OF ANOKA							
Anoka High	3939 7th Ave.	Yes		Yes	Yes		

Anoka State Hospital	3300 4th Ave.	No	No	No	1,000	6,000.00
Anoka Vo-Tech	West Highway 10	Yes	Yes	Yes	200	1,200.00
Fred Moore Middle School	1523 Washington Ave.	Yes	Yes	Yes		
Sandberg Middle School	1902 2nd Ave.	Yes	No	Yes	200	1,200.00
Franklin Middle School	215 West Main Street	Yes	No	Yes	1,025	6,150.00
Lincoln Elementary	540 South 5th Street	Yes	No	Yes	200	1,200.00
Wilson Elementary	1025 Sunny Lane	Yes	No	Yes	3,000	18,000.00
Washington Elementary	2171 6th Street	Yes	Yes	Yes		

<u>Institution</u>	<u>Address</u>	<u>Sub-Net</u>	<u>Footage To Extend Sub-Net</u>	<u>I-Net (2)</u>	<u>Cable Modem (3)</u>	<u>Footage To Extend I-Net</u>	<u>Estimated Cost Of I-Net Extension (1)</u>
CITY OF ANOKA (cont.)							
St. Stephen's School	506 Jackson Street	Yes		Yes	Yes		
Anoka City Hall	2015 1st Ave.	Yes		Yes	Yes		
Anoka Police	2015 1st Ave.	Yes		Yes	No		
Anoka Courthouse	2100 3rd Ave.	Yes		Yes	No		
Anoka Elections	325 East Main	Yes		Yes	No		
Anoka Fire	2301 3rd Ave.	Yes		Yes	No		
Anoka City Library	2135 3rd Ave.	Yes		Yes	Yes		
Anoka Ice Arena	4111 7th Ave.	Yes		Yes	No		
Anoka Senior Drop In Center	Washington & 6th	Yes		No	No		
Anoka Senior Highrise	2 Bridge Street	Yes		No	No		
Anoka Liquor	848 East River Road	Yes		Yes	No		
Anoka Liquor	809 Main Street	Yes		Yes	No		
Anoka-Hennepin	1355 West Main	Yes		No	Yes		

Alternative QCTV	Street 737 East River Road	Yes		Yes			
Learning Center	2727 Ferry Street	Yes		Yes			
Anoka Municipal Utility	501 Pierce Street	No	400	No	No	525	3,150.00
Anoka Parks Department	641 Jacob Lane	No	200	No	No	660	3,960.00

CITY OF
CHAMPLIN

Champlin City Hall	11955 Champlin Drive	Yes		Yes	Yes		
Champlin Fire	11955 Champlin Drive	Yes		Yes	No		
Champlin Ice Arena	12165 Ensign Ave. No.	Yes		Yes	No		
Hennepin Co. Library	12154 Ensign Ave. No.	Yes		Yes	Yes		
Jackson Jr. High	6000 109th Ave. No.	Yes		Yes	Yes		
Champlin Elementary	111 Dean Ave.	Yes		No	Yes	800	4,800.00
Champlin Park High	6025 109th Ave. No.	Yes		Yes	Yes		
Oxbow Elementary	6050 109th Ave. No.	Yes		Yes	Yes		

<u>Institution</u>	<u>Address</u>	<u>Sub-Net</u>	<u>Footage To Extend Sub-Net</u>	<u>I-Net (2)</u>	<u>Cable Modem (3)</u>	<u>Footage To Extend I-Net</u>	<u>Estimated Cost Of I-Net Extension (1)</u>
CITY OF RAMSEY							
Ramsey City Hall	15153 Nowthen Blvd.	Yes		Yes	Yes		
Ramsey Elementary	15100 Nowthen Blvd.	Yes		Yes	Yes		
Ramsey Fire	15153 Nowthen Blvd.	Yes		Yes	No		
Ramsey Fire	15050 Armstrong Blvd. NW	Yes		Yes (4)	No		24,460.00
Ramsey Police	15153 Nowthen	Yes		Yes	No		

Ramsey Public Works	Blvd. 14100 Jasper Street	No	5,280	No	No	13,750	82,500.00
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(1) Estimated at 2000 construction rate of \$6.00 per foot, excluding cost of electronics/additional nodes.

(2) Institutions beyond 500 feet of existing I-Net will be extended with the requesting institution paying actual cost beyond 500 feet.

(3) Institutions may receive cable modem service if I-Net not available.

(4) I-Net to be extended in accordance with Subsection 15-2-10A5 of this chapter.